

**FRANKLIN TOWNSHIP YORK COUNTY PA
BOARD OF SUPERVISORS
CONDITIONAL USE HEARING #2020-1 MINUTES
February 19, 2020 6:00 PM**

ROLL CALL

PRESENT:

Vice Chairman Kevin Cummings
Supervisor Naomi Decker
Supervisor Mark Wenrich

Solicitor Bret Shaffer
Treasurer/Asst. Sec. Pamela Williams

ABSENT:

Eric Stonesifer, Chairman

CALL TO ORDER:

The February 19, 2020 Conditional Use Hearing (CUH) #2020-1 was called to order at 6:00 PM by Vice Chairman Kevin Cummings. The meeting was held at 150 Century Lane, Dillsburg, PA. For visitors in attendance, please see attached sign-in sheet.

PLEDGE OF ALLEGIANCE AND PRAYER

The Pledge of allegiance was led by Vice Chairman Cummings and the prayer was led by Supervisor Mark Wenrich.

CONTINUATION OF CONDITIONAL USE HEARING (CUH) #2020-1 from February 12, 2020 at 6:00 PM, James Morrison, 610 Franklin Church Rd. for a kennel

Bret gave the instructions for the meeting. Mr. Baranski called his first witness for testimony in objection of the kennel; Brandon Weaver, 730 Franklin Church Rd. He is 1200-1300' from the applicant's property. Listed below are his major points of objection:

- Kennel operating without approval from the township but has state permits
- From August through September of 2019, the noise increased; hears several dogs daily at various time increments throughout the day; five, 15 and 30 minutes at a time and various time periods; early AM, early afternoon and from 6:00-8:00 PM in the evenings. The noise is less since it's winter and the building is closed.
- If doors are shut on building, just hears outside noise. If doors are open or dogs are tethered, hears outside and inside noise.
- Described pictures of dogs in or tethered to crates for extended periods
- Described pictures of dogs standing in Charles' field
- Reviewed his complaints to the township from September 2019 and January 2020
- Lack of oversight at kennel; didn't fear kids being out prior to kennel

Attorney Snyder cross-examined and asked what his experience is with other kennels. He stated since the doghouses are not out, there are no dogs tethered out. He addressed a few other issues.

Attorney Baranski called his second witness for testimony in objection of the kennel; Jason Charles, 620 Franklin Church Rd. who is adjacent to 610 Franklin Church Rd. He confirmed there is wire fencing between the kennel and the Weaver's property and the dogs can't go through. He has a horse boarding and training business. Listed below are his major points of objection:

- Noise was louder in September and October of 2019; difference if barn doors open
- His customers have heard noise, has caused some distractions but has not lost customers

- Reviewed his complaint to the township from 12/26/19, barking, lack of fencing, no oversight and due to the type of breeds, fear for his daughter
- Stated his property value was down in the fall
- Could disrupt horses and spook them or cause them to buck

Attorney Snyder cross-examined and asked him if he had a Conditional Use Permit for his horse boarding/training business. He asked what his experience is with other kennels and if it's louder than other kennels he knows about. Mr. Charles was asked if he had any specific data on the property decline.

Attorney Baranski called his third witness for testimony in objection of the kennel; Crystal Charles, 620 Franklin Church Rd. who is adjacent to 610 Franklin Church Rd. Listed below are her major points of objection:

- Stated fencing is three strands of horse wire
- On 11/9/19, a dog got loose on their back 25 acres; concerned about daughters' safety
- Didn't call township or talk to anyone at kennel
- Aggressive barking: on 2/15, there were three instances of continued barking for one to 1 ½ hours each
- Thinks it will hurt horse business

Attorney Baranski called his fourth witness for testimony in objection of the kennel; Eugene Kilmore, 200 Hidden Creek Rd. who is adjacent to 610 Franklin Church Rd. Listed below are his major points of objection:

- Hears gunfire and whip noises once per month
- Hears barking early in the AM for 15-60 minutes at a time and some from 5:00-6:00 PM
- He filed a complaint to the township on 12/3/19
- Stated the kennel could affect his property value
- Concerned about his two small dogs; makes his time on the porch less enjoyable
- Concerned about buying the field property now vs. previously

Attorney Snyder cross-examined him and asked him to compare his dogs wandering vs. the one time a dog wandered off the kennel property. Mr. Kilmore said the kennel is what drew his dogs off the property as it didn't happen before. He also asked him to compare shots being fired from the kennel vs. during deer season. Mr. Kilmore stated he had no data on property value decline.

Attorney Baranski called his fifth witness for testimony in objection of the kennel; Shane Kilmore, 210 Hidden Creek Rd. who is 2023' from 610 Franklin Church Rd. Listed below are his major points of objection:

- Dog barking; hears whipping and screaming; he had to go in ten times due to noise
- On 2/5/20, a large dog was out across the street from the kennel in the farmers' field which was picked up by a girl who boards horses there.
- Has not heard kennel located behind him on Brittany Lane

Attorney Snyder cross-examined him and asked him whose dog it was that was loose and what the relevance was to the size reference.

Attorney Snyder then recalled some of the applicant witnesses. Mr. Marante stated that during August through September of 2019, they were making a transition as the kennels weren't done yet and the dogs had to be tethered; they were complying to state law. Tethering has ceased since the kennels are done.

The BOS asked Wilbur Slothour from Land & Sea Services how many complaints he has had on the property. He stated he has had nine total since the October 2019 hearing: two in

December of 2019 through the last one on February 3, 2020. Kevin asked Wilbur if responses were sent to the complainants and Wilbur stated he didn't know if responses were sent or not. Wilbur stated he has been to the property. He also said that both parcels have always been identified as 610 Franklin Church Rd. and buildings are within the 100' setback. There is no known "reverse subdivision". If the parcels were separated, the setbacks would be non-conforming. It should be maintained as one parcel if a kennel is there. Bret asked how you determine front, back and rear. Wilbur said the front is what is facing 610 Franklin Church Rd. and he reviewed the ordinance to make sure it was correct.

Vice Chairman Cummings said the kennel is state approved and has valid licensing but was concerned because it was a DK5 license allowing up to 500 dogs, but the application stated there would be no more than 20 at a time. The DK1 allows no more than 50 dogs annually with the intent of cycling a maximum of 20 dogs at one time; records show this is what they paid for. Vice Chairman Cummings also asked the applicant about the horses being boarded there. In response to questions from Vice Chairman Cummings, Mr. Morrison said that Christine Stever keeps two horses there, but it is not a horse boarding facility. He stated the staffing is 24 hours per day and there is normally three there depending on if they're picking up dogs. He is not renting the house. Vice Chairman Cummings also noted the volume comparisons when Mr. Stuffle played the videos vs. when Attorney Snyder played them.

Supervisor Decker asked how the township would track the number of dogs at the kennel and the manager said they could provide that tracking. She mentioned that kennels be confirmed as an agricultural use. Supervisor Decker expressed concern that the sound measurement was done with the doors closed vs. opened. The manager said the doors could be kept shut and there is ventilation through the ceiling. Attorney Snyder confirmed that kennels are not under the Right-to-Farm Act. Vice Chairman Cummings also confirmed this later. Discussion ensued on the type of zoning this would be permitted in.

Vice Chairman Cummings asked Mr. Stuffle questions about the volume of the videos that were played and if Mr. Stuffle agreed that there was a difference depending on the volume. Supervisor Decker asked about when the CD's were originally received and what was the procedure of how they were handled. Pam said she received five CD's and asked Chairman Eric Stonesifer about them. He stated the Board of Supervisors could not view them prior to the hearing. He said the CD's should be returned to Mr. Stuffle and to tell him they could not be viewed by the BOS prior to the hearing but if he chose to do so, he could present them as information during the hearing.

Township Solicitor Bret Sheaffer asked Attorney Baranski if this kennel were not permitted in this zone, what zone in the township did he think it would be permitted. Atty. Sheaffer asked if the opponents made a list of conditions if the kennel was approved and he replied they did; it was entered as an exhibit. He stated that their number one wish is that there is no kennel operating. Atty. Baranski discussed the issues that would be involved in enforcing conditions for the kennel.

In Attorney Baranski's closing arguments, he reviewed the "res judicata". He stated the same applicant, same property and the same facts took place now as in October of 2019 and a decision was made which legally bars the applicant from a repeat hearing. He stated the kennel went in and has been operating illegally since August or September of 2019. He discussed how the operation went in without permitting and Conditional Use approvals in Franklin Township and asked that the use of the kennel be denied. He reviewed the criteria of the Zoning Ordinance and pointed out what criteria he determined were not being met. He gave

examples of the testimony his witnesses presented. He stated he did not think there was any legal way this could be approved by Franklin Township.

Attorney Snyder addressed "res judicata" in his closing and stated the applicant was granted the opportunity to come in the second time to present the use. He reviewed the zoning for open space and where a kennel can be placed and its criteria. He also discussed points of testimony from witnesses, ordinance requirements and definitions. Nuisance and noise complaints were addressed but stated a kennel is allowed here. Atty. Snyder said there are current and valid licensing as well as inspection reports. There have been no threats, no attacks and there has been adequate access for emergency vehicles. He stated they have met the previous criteria and are open to reasonable conditions with respect to the concerns of the neighbors.

Discussion was held on the list of conditions and whether it would be reviewed and agreed to tonight or the record held open.

The board went into Executive Session at 8:47 PM They returned at 9:30 PM Vice Chairman Cummings **made a motion** to accept all exhibits as records.

Second by Supervisor Wenrich

Discussion-none

The motion carried

Vice Chairman Cummings read a statement regarding the hearing and decision and **made a motion to deny the conditional use.**

Second by Supervisor Wenrich

Discussion-none

The motion carried

A motion was made to adjourn the meeting at 9:40 PM

Second by Supervisor Decker

Discussion-none

The motion carried

The meeting adjourned at 9:40 PM

Respectfully submitted,

Pamela Williams

Pamela Williams, Asst. Secretary