

## **ZONING BOARD OF ADJUSTMENT**

**FEBRUARY 4, 2020**

### **MEMORIAL BUILDING**

**7:00 P.M.**

*The following are to be considered draft minutes until approved by the Board. These minutes were amended 2-13-2020.*

At 7:00 Chair Chiarella called the meeting to order. Board members introduced themselves.

Present: Susan Chiarella, Chair; Cody Patten, Bryan O'Day, Justin Hastings, Peter Abair, and Tanner Jacques. Susan announced that Tanner is an Alternate. There are 5 elected Board members present.

Janet Roberts announced a tape is running for minute transcription purposes. A sign-in sheet was passed around.

Others present: See sign-in sheet attached to the end of these minutes. (*Attachment A*)

Minutes from December 3, 2019. Justin moved to approve the minutes as written, seconded by Tanner. Minutes were approved by Justin, Susan, and Tanner. The others having been absent.

Susan announced Steven Albrecht is present and is interested in serving as an Alternate. His term of office was discussed. Bryan moved to make Steve an alternate, seconded by Cody, and unanimously approved.

Susan announced Christine Filmore, Town Counsel, is joining the meeting tonight.

At 7:10 p.m. Susan opened the public hearing for an Appeal from and Administrative Decision issued by the Town of Springfield Board of Selectmen on December 16, 2019 from Sue-Ann and Andrius Kazenas by their Attorney, Sheridan Brown. Susan asked for confirmation that the hearing was properly noticed and the abutters received notice. Janet Roberts confirmed notices were sent. Susan did see the notice in the newspaper. Susan asked that those wishing to speak raise their hand, identify themselves, and direct any comments through her

Susan stated the purpose of this hearing is to determine whether the Board wishes to overturn the Selectmen's decision denying a Certificate of Conformity to the Municipal Zoning Regulations as applied for by their Attorney, Sheridan Brown. She opened the floor to Attorney Brown. Attorney Brown stated he had one administrative item before he begins. One of the deeds for property of a very vocal abutter (Gene Hayes) was prepared by Susan's husband's law office. He wanted to mention it in case she was not aware and see if this was any sort of conflict issue that she would want to disclose or if this was a matter where she would want to recuse herself. Gene did not have any issues with Susan being on the Board. Susan stated the relationship ended after the closing was done. There is no financial relationship at this point. She stated she did not see any reason to recuse herself.

Attorney Brown provided a power point presentation. Attorney Brown explained Sue Ann and Andrius were seeking a Certificate of Conformity to go with their application for a pet vendor license from the State. He also requested that all paperwork constituting the records for this request be transmitted to this Board for this appeal. As of yesterday, when he checked the file, the only thing in it was Sue-Ann and Andrius' appeal and a copy of the 1997 ordinance. They have an issue with the letter from the Select Board as it was basically one sentence that said, "after consultation with counsel, we have decided not to grant a certificate". There were no findings of fact, and no explanation. Sue Ann and Andrius presented quite a bit of evidence regarding the status of the use of their kennel as a grandfathered use. In 2019 a new state law was passed requiring anyone transferring 25 or more dogs be licensed as a pet vendor. Sue-Ann and Andrius have been over that number since 2005. Originally the law started a year prior having a limit of 50, and that is something they would have been just under. When it changed to 25, they required this Certificate as part of getting a pet vendor license. The RSA requires this certification that the facility conforms to the municipal zoning regulations. His clients believe it does conform by the 1997 ordinance in effect when they established their business in 2005. Sue-Ann purchased the property in August 2005, and that can be verified by the registry of deeds. She moved her Grantham Kennel, called Select Shepherds to Springfield in August 2005 establishing it as a home business. Sue-Ann searched for appropriate property at the time. Attorney Brown stated there are witnesses here tonight that helped in the move from Grantham to Springfield if the Board would like that information. They have personal knowledge of the facilities there, what was set up for kennels, what was indoors or outdoors, and the numbers of dogs. He stated from evidence presented, the town should have been aware that in 2005 Mrs. Kazenas (formerly Connery) brought 19 dogs with her to Springfield. They were licensed on a group license then and has licensed in subsequent. Attorney Brown stated the business has been advertised online, and he provided copies of screenshots from archived website information. (*attachment B*). Attorney Brown reviewed the information in the archives for Select Shepard's. Attorney Brown explained that a non-commercial kennel does not mean that they are not selling dogs. A non-commercial kennel is a designation of a smaller kennel that someone is doing as a side job, where someone raises puppies they don't keep for their own showing or hobby. It is the type of kennel that people operate as a home business, not taking commercial orders, or a large-scale giant puppy operation.

Attorney Brown stated non-conforming uses are covered in Article VIII of the 2018 Ordinance, defined as a structure or use which legally existed prior to the adoption of the provision in the zoning ordinance which now prohibits it. The provision in the Zoning Ordinance that prohibits a kennel as a home business would be all of the new requirements that came into play in 2006 but were not in effect when Sue-Ann established her home business. The Ordinance allows non-conforming uses to be altered and expanded as the business and conditions warrant, as long as they do not become more non-conforming. There have been some changes to the Ordinance that would have allowed changes in the business without it being more non-conforming. Non-conforming use provision has been in every Springfield Zoning Ordinance and is there as a constitutional safety because laws are not written retroactively. Laws are not changed to take away what people can do. The grandfathered status is there as a matter of due process. The

1997 Ordinance is the one that applies to the Select Shepherd's kennel. The Ordinance that went into effect in 2006 is the first time a Site Plan or a Home Business was required for a home business. Before that, home businesses were allowed as a matter of right. They were not a special exception thing you could have. Per Article III b.1 c on page 2 of the 1997 Ordinance which is the one in effect when Sue-Ann established her business, a home business was any use of a professional or service character customarily carried out in a dwelling or accessory buildings, but did not make them exclusive. There could be no more than two employees other than the residents. He noted an accessory building is subordinate and incidental to and on the same lot occupied by the same building or use. In 2005, under the 1997 ordinance, it was any structure having a roof intended to for shelter, housing or enclosure of persons, animals or property. Sue Ann had and continues to have kennels in the house and basement as a secondary use, and also accessory buildings in the form of kennels with roofs and four fenced walls and a sun shade that fits the definition. There were not only kennels but also large dog houses which would also be a structure under that definition. In March 2006 the definition of home business was replaced in the Ordinance by a set of criteria for home occupations and home businesses, (Article V on page 10). At that point, a site plan was part of the requirement also, but not in 2005. It was in 2006 when the Zoning Ordinance included a prohibition on outside operations for a home business. Going back to the original definition the only thing that spoke to that were that things be conducted within a dwelling or accessory structure. It would have been easy to say exclusively within or not outside in that, but it does not seem as if it was understood that way. In 2006 Ordinance seems to indicate that nobody understood it that way either because it carried over the language from the original definition that it would be conducted within the dwelling or an enclosed accessory structure. He thinks this means you don't build a third building that is primarily for the business. The prohibition was added, (Article V2 h) that a home business shall not be permitted outdoors on the property, no outside operations, storage, or display of materials or products. That was in 2006, not in 2005 when Sue Ann established a home business. Someone thought there was a good reason for putting that in and the most logical reason is the one reasonable people would reach is that the first ordinance in 1997 did not include a prohibition on outdoor activities or outdoor performance of the business.

Attorney Brown stated there were some witnesses present who would be happy to tell what the status of the business was. He also has written statements from several that could not be here. He stated the witnesses remember there being more than a dozen dogs, several indoor kennels in the basement of the home, a large fenced play area in the back yard, where the dogs go out in different groups to get exercise, but not all at the same time. There were about a half dozen outdoor kennels measuring 10' x 10 which could be further divided, having roofs and sunshades, one was built under the deck using the deck for a roof. These people have been in contact with Sue-Ann since 2005 and Audrius since 2011. There is documentary evidence the business has been there since 2005, that his client's do not want to provide due to confidential information. They would be willing to provide that to the Board in a non-public session if the Board would like.

**Amended 2-13-2020: "Attorney Brown continued to state that"** Sue-Ann and Audrius formerly sought a Special Exception. The Special Exception has nothing to do with this because Sue Ann

and Audrius did not initiate that. The Town asked them to come before Zoning and Planning for a consultation. What the Town did went outside the bounds of their authority. Under the 2018 Ordinance, the Selectmen, upon receiving credible evidence of a violation, are authorized to enforce the provisions of the ordinance by either seeking relief from the Superior Court, which didn't happen, or by taking other legal action which also didn't happen. On the basis of some noise complaints his clients were sent a letter that said they determined his clients were operating a kennel which fits the definition of a home business. The Board required them to appear before the Springfield Planning Board for a consultation and didn't give them an option or ask to talk to them first. Most people getting that kind of letter are going to do what they are asked.

**Amended 2-13-2020 to add new paragraph.** The credible information as taken from the Selectmen's minutes were based on complaints from Wayne Smith of 360 Hogg Hill Road about barking dogs at a neighbor's residence saying the neighbor has a kennel, breeds and sells German Shepherds. The noise is very annoying to him and several of his neighbors. Attorney Brown stated none of that is in dispute, they have done that since 2005 as a "grandfathered" home business. Leigh (Callaway former Selectman) stated he found information on a website.

**Amended 2-13-2020 to add new paragraph** Attorney Brown stated again that is not in dispute, it has been on a website since 2005. He reported the minutes also stated Tim Julian (Chief of Police) had been there several times, sometimes there is barking and sometimes not. Attorney Brown stated it is inconclusive as to how many of the complaints are valid. The Town denied his clients due process by forcing them to apply for an already established and constitutionally protected use. Failing to properly advise them of their specific violations and appeal rights by using standard enforcement language. The Selectmen did not use this standard but required his clients to apply for a Special Exception. He stated the code enforcement action was "disguised" as an effort to help. Minutes show ( from a joint hearing with Planning and Zoning) that Sue-Ann was told the town was not opposed to home businesses or occupations, they were trying to point here in the right direction. He stated the town was inducing his clients toward a process they didn't need. Attorney Brown stated they already were compliant, but the town persisted even knowing that this was probably a grandfathered business. Other information showed it has been the home of Select Shepard's since 2005. He stated at one of the meetings Justin Hastings questioned how long the business had been there. Sue Ann explained she had bought the house in 2005 and how she and her husband ran the business before he passed away. Sue Ann stated she had been doing it there for 11 years. Attorney Brown reported that a number of residents, including employees, have adopted dogs from Sue Ann. It is unfortunate what has happened, and it is hoped the town will take this opportunity to make it right. A few abutters are upset with noise. There are options to address the noise, but it needs to be established whether it is theirs or not. It doesn't require extinguishing someone's business that exists as a grandfathered use. He stated based on the facts presented, he hopes the Board will make the right decision. He stated for 5 years now, his clients have been "bullied" by abutters and the town. It is not fair, and it needs to stop. The fairness is to equally interpret the rules from 1997 in effect when they established their business. Look at those and apply them to what his clients are doing. There is a lot of good work done for the community by these dogs. Those making complaints about barking do not see what these dogs do when they are working and the valuable public service

they provide. Attorney Brown stated he hopes the Board will reverse the decision of the Selectmen and allow his clients to get the Certificate required to allow them to be certified by the State and continue to let them run their business as they have.

Susan had some questions from the Kazenas witnesses. Abutter, Gene Hayes stated he has seen information from the State that shows that they were not registered as a business from April of 2005 to January of 2008. Susan stated the Board was going to have a chance to ask questions first, and then others would be granted an opportunity to speak.

Kyle Andrews stated he moved a lot of the kennels and crates and helped to set them up under the deck and the 10 x 10 x 6 in August of 2005 that were in Grantham, which he set up. The kennels had shade screens. The kennels are long panels with shade screens, so it is hard to say He also built play yards for the dogs, so it wasn't just kennels. He estimates he moved probably 5 kennels and built the one added under the deck. There were a lot of kennels, probably 20, that went into their basement that he helped with. He estimated they moved probably 20 dogs.

Susan asked how many dogs may have been sold in the first year. Sue Ann stated she has contracts, but she would have to look up that information. Susan stated she would like to know the number of dogs sold since Sue Ann bought the property.

Tanner asked if Mr. Andrews was only involved with moving Select Shepherds from Grantham, or did he continue to help there. He stated he helped move, but he has known sue Ann since 2003 when they bought their first dog from her. Mrs. Andrews stated that she helped with the moving. Her recollection is pretty much the same as her husbands.

Katherine Ouellette stated she had worked for Sue-Ann off and on in 2005 until 2011. She was not an employee, just a friend helping. Susan asked what work she did. Katherine reported she cleaned kennels, fed dogs, let dogs out, brushed, groomed bathed. She worked for Sueann when she was in Grantham and when she moved to Springfield. She was not paid for her work.

Sue Ann was asked if other than the portable kennels from Grantham, has anything been built on the site. Sueann stated not in 2005. She has added two outbuildings after that. One building now for chickens, geese and ducks, and the other issued for storage of supplies. Sometimes dogs are in the storage building depending on weather and other conditions. One outbuilding were added in 2006 and the other between 2015 and 2016.

Tanner stated the appeal says there are no employees other than family, so other people help in some kind of volunteer capacity. He asked how many other people she had working in the facility that were not employees there. Sue Ann said the numbers varied so through the years whenever she has had situations when she has needed help, she has reached out through her vet for people to help.

Attorney Brown clarified that a lot of folks have worked for Sue Ann at one time or another, but there have not been multiple employees that exceed the ordinance. There is quite a community that pitch in and help each other.

Susan asked if anyone else wanted to speak in favor of the applicant. Attorney Brown shared written statements from Sue Ann Blair and Lynne Jenness in support of the applicant (attachments C & D). He read an e-mail from a comment from Mackenzie Donovan, writing in support, and explaining her relationship with Sue-Ann and her dogs, and the opportunity to adopt a service dog for her medical issues. The Board reviewed the documents. There were no other comments in ~~support~~ support.

Susan opened the comments to the floor and stated that the issue tonight is not to rehear the case, the Board is here to see if the Selectmen made the right decision. Wayne Smith asked what it takes to get amendments to the zoning ordinance approved. Bryan reported it needs a vote presented though a warrant article at Town Meeting, the second Tuesday of March. All changes made to the Zoning Ordinance are proposed by the Planning Board and people vote for **or** against. Wayne stated the Town, all people included, have to approve of these changes, and if you don't disapprove of them by saying nay, then they are approved by the Town.

Gene Hayes asked what is the difference for these people? Steve Touchette owned this property in the late 90s and built the house and a garage, which he later subdivided off and sold separately from the house. He went through the process and was allowed to go forward as a business. Gene stated he does not think businesses like that should be introduced to neighborhoods like theirs. There is a lot of noise that carries and is obnoxious. Steve Touchette had to do what these people say they do not have to do. Gene stated they were not in business from 2005 to 2008 when they are claiming they were in business. He found nothing registered with the State during that period of time. There were four filings of their business over the years. The one they just made in July is the most accurate as to what they are doing. He believes this is an attempt to continue something that they were denied to do.

Sue Ann responded that Select Shepherds has been registered with the State since the mid 90's, and each time they have moved they have updated the address. The tradename is registered with the State of NH. Attorney Brown stated it is not a requirement to file with the state to operate a business. Attorney Brown noted his concern that for the past five years there are people grabbing pieces of the law that are not relevant.

Susan stated the Board is going to look at what was presented and look at the issues that were presented, and the facts that were presented to make a determination.

Judi Shank stated she hears noise when the dogs go out and play, and when they go out at night. She stays out with her dog at night to make sure her dog doesn't bark if some other dog does. The barking scares her grandson when he walks by their driveway. She hears the noise in the winter with the windows closed. She spoke to information from the previous hearings several years ago. She asked if this is allowed to continue, what is going to be done to keep the neighbors

from being disturbed from barking dogs. This isn't just like a one dog family. There is a lot of noise. The neighbors deserve some quiet. Judi asked if Sue-Ann was a licensed service dog trainer. She acknowledged the need for service dogs, and knows they want to run a kennel. She is concerned that the dogs scare her grandson and others or keep people awake when they are trying to sleep.

Emily Cleveland asked to address the issue of "grandfathered" relative to the noise. She cited from Cohen vs Henniker 134 NH425427 1991. "A use of land which at the time a restriction on that use went into effect was established or vested, and has not been discontinued or abandoned, can continue indefinitely unless it includes activity that is a nuisance or is harmful to the public health and welfare, but the use cannot be changed or substantially expanded without being brought into compliance. Emily stated that she would submit that this qualifies as a nuisance. (Attorney Fillmore will get copies of the case to the ZBA)

Wayne Smith stated "we" seem to be negotiating back and forth about what happened and when, what was, what ordinance has changed and when. He referred to 1997 Ordinance that states the land use shall not be a detriment to property values surrounding it. He stated there has been one person that moved out because of the noise and they could tell the negotiations that took place with the buyer because of the dogs barking. He stated he would get an appraiser to come in and appraise his house, and if it is anything less than what it should be, that's a problem.

Roxanne Smith noted the lawyer has said "they" are bullying "them". She does not think that should be in the records. They have tried to work with them. When the dogs bark it doesn't sound like playing, it sounds like fighting, and it is a terrible noise.

Attorney Brown stated noise complaints can be dealt with through the obnoxious use provisions in the ordinance. It doesn't mean stopping someone's business. He thinks some want to get rid of the business because the case is not able to be made that there is a nuisance there. There has got to be some burden of proof. The Chief responded to the calls and has been out there. This is about someone's business they have spent their lives building and people are asking for a decision without any real hard proof of what is going on. He finds it hard to believe there is not audio or video of anything. Other people have dogs. The abutters have not made a case that it is all his client's dogs. It is his understanding his client's dogs are not out at night. There needs to be more delivery of facts about what is going on. Even if there is a noise issue, it does not extinguish the grandfathered use. The case mentioned above is not exactly relevant. If his clients are going to be asked to prove they have a grandfathered use, others should be able to provide more than they just hear noise. He hasn't heard anything to establish that it is coming from his client's dogs. Susan asked was proof not good enough when someone hears something and testifies that they hear it, and they know where it is coming from. Attorney Brown stated that could be proved, but there are also police reports that show many times when the chief went out and he didn't find out what was going on. He has asked via the right to know law for reports of what has happened at those calls and it still hasn't been provided. To his knowledge there was no citation. Isn't the Chief the arbiter of whether something is worthy or not? In all this time there have been no citations for noise. His point is, don't extinguish their business. If there is a

noise complaint, make the case. They are happy to work with the Town on legitimate noise complaints, and that is part of the reason they came back to try to give the Board another opportunity for them to work with the Town. That willingness is going away. Susan stated she is quite sure what was presented when they came back in December made no mention of any abatement for noise. The Board refused to hear it under the second application doctrine.

Attorney Brown stated there have been opportunities to have a conversation about mitigation if there is proof. This is not relevant to the grandfathering.

Emily Cleaveland requested that should the Zoning Board decide to make a decision in this matter, they do a site visit first.

Gene Hayes stated Emily's request is a standard one. The comment to call the police chief is a good one. If they all start calling him every time, they hear the dogs, his phone is going to be ringing off the hook. He was working on his property next door this fall, and stated the barking goes on incessantly all day long. This is not just dogs playing, this is dogs being worked outside in the yard. This is dogs being trained on site. They claim they are not doing that. The argument is not whether this should be happening, it has already been denied. He stated when Steve Touchette wanted to run a business he came in and got a permit to run a business on his own property. These people didn't do that. They come in after the fact wanting to get a permit. The record in the State of New Hampshire has blanks all through it. These people interrupted their business more than once and only recently registered as to what they wanted to be registered for to get their pet vendor license to continue doing what they are doing. This is not a situation that should have started back in 2005 and shouldn't exist now.

Susan stated the focus on this Board tonight is to determine whether this use from 2005 fits into non-conforming in the 1997 Ordinance. Gene again noted Steve Touchette's use of the property, he came to this board and got his approvals. What was the difference in 2005? They say they were running a business, but they never came to the town. Bryan O'Day stated the difference is the Kazenas' claim this is a Home Business. Steve Touchette's was a clear commercial operation.

Sue-Ann asked to speak to what the neighborhood was like in 2005. Metric Motors was right beside her. On the same side the next house was landscaping and plowing, and the next house on the same side of the road was a kennel with golden retrievers and lots of barking. Across the street, nothing, but a little further down a greenhouse, very much a commercial area. The existing kennel was already there. The kennel is still there but the woman is elderly and doesn't have as many dogs.

Susan asked if Sue-Ann had any pictures to show what the property looked like when she bought it. Sue-Ann agreed to produce those. Susan would also like to know the number of dogs sold yearly from August 2005 to August 2006 and then every year after that. She just wanted the numbers of dogs sold from the litters at the time, not the contracts. Sue-Ann stated this is not just about puppies but also adult dogs. There is a rescue effort on their part. Sue-Ann reported a

lot of the time what they do does not include handling dogs. A good share of what they do involves matching people and dogs in need without having the dogs in their possession. Susan stated she is trying to get an idea of what physically goes on with the dogs, and what was going on in 2005. Susan asked how many dogs there were in 2005. Sue-Ann stated somewhere between 19 and 25 adult dogs. A ballpark number of puppies in one year would be about 50 but she would need to check her records. Sue-Ann stated the kennel did a major downsize between Grantham and Springfield on purpose. The maximum number of dogs in Grantham was 28 adult dogs.

Susan asked the Board if they wanted to see anything else. Justin stated the hard part is “splitting of hairs” from the ordinance in 2005 to the new ordinance in 2006. Bryan stated it would be relevant for the neighbors to tell them when they moved there, to see what the timeline is with problems or not from people who haven’t been there since 2005. Justin wanted to know how active the business was in 2005 and has it changed since? Sue-Ann reported it is smaller, they do not breed as much as they did anymore, they do more rescue and training than anything else. Sue-Ann started to reviewed information from her laptop, but it was difficult to share so Attorney Brown will get numbers to the Board.

Wayne Smith stated if they get the permit, the State says they can exceed 25 animals bred a year. He asked how many they can exceed to?

Christine White stated they have been there since 1999 – 2000 (about 2/10 of a mile away). They never really had any noise issues on the street except the dogs.

Justin stated he wants to know when the noise started, because what they are dealing with is a six-month window between 2005 and 2006. Did it exist before or has it gotten worse since?

Michael Chiarella noted he didn’t understand the testimony and asked to have Sue-Ann Clarify what she said. Susan stated she understood what was meant. (There were several people talking over one another at this point.) Michael commented that this seems to be getting far afield from the real issue. The issue as he sees it is under the existing ordinance when she started her business, there was never any question she had a business there or the number of dogs, the issue is under the definition of home business does that fit in this category. He saw what was presented on the screen, and after having read many restrictive covenants and ordinances, the language seems to contemplate a lawyer’s office, a dentist’s office, a doctor’s office or something served by a professional, it doesn’t seem to fit with what Sue-Ann is doing. That is something the Board must decide.

Bryan O’Day stated the language is that within a structure. Justin stated the testimony is the ordinance said inside a building but never specifically addresses inside. The ordinance in 2006 specifically say inside. The question is the spirit of the ordinance. Bryan stated the 2006 Ordinance was a clarification of the original. Justin said that even the original never said anything about outside, but then there was a clarification in 2006.

Attorney Brown stated the question there is was the original ordinance sufficient to put people on notice that they could not have outdoor activities as part of a home business. He thinks that is probably why the clarification was made. It's a natural process for people to do research before buying property to see what they can and cannot do.

Attorney Brown raised an objection to the highly irregular situation where the husband of the chairperson of the board, one who represented one of the abutters consistently speaking in opposition is now offering testimony in the proceeding.

To the examples of outside, plumbers don't do anything in their house, they load a truck, store things in a garage and go back and forth outside. A carpenter could build things at home. There are things that could put them within that definition, but they are not enclosed entirely within a house. The accessory structures fit within the definition, they are kennels or accessory structures as the ordinance was written. It is not his client's fault if the ordinance was not well written.

Bryan referred to and read Article IV, General Provisions from the 1997 Ordinance, Obnoxious Uses. Attorney Brown stated the business was not an obnoxious use. There were no noise complaints. Bryan disagreed, and noted just because someone hasn't complained, doesn't mean there hasn't been noise. If he hit an anvil with a hammer, but if no one complains does it mean there wasn't any noise, is like saying if a tree falls in the woods it makes no noise because you are not there to hear it. Does that mean that tree didn't make any noise when it fell?

Attorney Brown stated this is talking about taking away somebody's property based on a complaint that hasn't been made, and no one would accept that. There were no complaints in 2005 about this business. There are people in opposition who say there were no problems with it for many years. Bryan asked if there was no noise even in 2005? Attorney Brown said he is sure there was noise. Bryan said if there was noise it didn't comply. It isn't grandfathered. Grandfathered was before 1987, before zoning went in you were grandfathered. If you were doing whatever you were doing before 87 you were grandfathered. If you were doing a home business that either wasn't outside, or didn't make noise, you were probably grandfathered. Attorney Brown stated if they thought that interpretation is going to hold up in court go with it. The issue of grandfathering and the issue of obnoxious use are two separate things. Grandfathering is talking about did they stat a home business, did they meet the home business criteria. You could have somebody that had a legitimate home business that became an obnoxious use. You would deal with it as an obnoxious use, you wouldn't deal with it by taking away the business. There is a mechanism to deal with noise with the obnoxious use provision. Grandfathering doesn't exempt them from having an obnoxious use. If it is an obnoxious use and people can proof that it is creating noise, different from other acceptable noise, make that case and make a noise complaint. The town has not done that. The facts are missing.

Susan re-read the definition from the 1997 ordinance for home business. Her issue is with the word customarily. She does not feel that having 25 dogs is a customary business. Attorney Brown stated that is customary for someone in the breeder business. Susan stated it is customary but is that location the appropriate location for that business. Attorney Brown said in 2005 it

was. The town didn't raise any concerns about it and people were plenty aware of it in 2005. Now 15 years later, people are making an argument that they could have been deprived of an opportunity to operate their business. If people had a problem in 2006, they should have had them come forward then. An entirely different set of standards are being applied to a business that are not appropriate based on the 2005 Ordinance.

A lengthy discussion followed regarding the change between the Ordinances and the limiting criteria relative to plumbers, carpenters, etc. Bryan stated in the definition it says "within" the dwelling or accessory building. He asked Attorney Brown for his explanation of what "within" means. Attorney Brown stated it means within the dwelling or an accessory structure, and not in its own independent structure, not having another structure built exclusively. It is ancillary to the dwelling but is not overtaking it as the purpose. If there is another interpretation, he would like to see it. He asked why in 2006 did the Town feel if there was a rock-solid definition that nothing could be done outside, why was the additional criteria added. Bryan stated to clarify because some might say that "within" doesn't mean within the structure. Susan stated most ordinances migrate over time to become clearer. It is made clearer for a better Ordinance. Attorney Brown stated that Springfield is not a hallmark of good zoning. There is one district, and everything is done by Special Exception, which creates spot zoning. "Attorney Brown referred to the recent firewood processing case and noted his clients' case is similar to that. Judi Shank asked Attorney Brown what he considers to be proof of noise? If this is approved, can there be a limit on the number of dogs. Susan noted the Board is only dealing with the Selectmen's decision. There was a lot of testimony regarding noise at those previous hearings.

Pam Laurie reminded the Board that at one of the hearings Sue-Ann acknowledged the noise and was going to present things to mitigate. There is no question there is noise.

Attorney Brown asked to have neighbors state when they moved to their property.

Gene Hayes has been on Stoney Brook (since 1992) and is a half mile away and he can hear the dogs. This fall he bought the lot next door, on Hogg Hill Road, and when he has been there working, the barking goes on all day long.

Pam stated she had lived on Stoney Brook Road and bought their first Hogg Hill property in the around 93-94.

Judi Shank moved in fall 2006. Didn't hear the dogs until 2008. She has noticed an increase.

Wayne Smith moved in 2011. He looked at the house three times before they bought it. He never heard dogs barking at those visits. The day he moved in, the trailer got jackknifed at the bottom of the driveway and he heard dogs then. He has been hearing them since the day they moved in in 2011. The amount of noise depends on the time of year.

Emily Cleaveland moved in in 2008. She doesn't remember not hearing noise.

Judy Gurka moved in 2000. She doesn't recall hearing anything until the noise started to escalate in 2007.

There were no more comments in favor of or against the application from public.

Susan stated they have asked for evidence from the applicants in the way of pictures from when they first bought the house, and evidence of the numbers of dogs sold yearly. Unless anyone has anything relevant to add right now, she suggested the Board adjourn until such time as they get that evidence.

The Board agreed they may have more questions or want more testimony after they receive the requested information from the applicant. After that the Board could close the public hearing at the point, they feel comfortable and enter deliberations.

Bryan moved to continue the Hearing to Thursday, February 13, 2020 at 7:00 pm. The motion was seconded by Cody, and unanimously approved.

On or about 8:50 p.m. Justin moved to adjourn, seconded by Bryan and unanimously approved.

Submitted by,

Janet Roberts  
Administrative Assistant

Attachments

- A: Sign in Sheet
- B: Screenshots
- C: Written Statement
- D: Written Statement

AMENDED 2-13-2020