

ZONING BOARD OF ADJUSTMENT

FEBRUARY 13, 2020

MEMORIAL BUILDING

7:00 P.M.

The following are to be considered draft minutes until approved by the Board.

At 7:00 p.m. Chairperson, Susan Chiarella called the meeting to order and announced this is a continuation of a meeting that started Feb 4th. Members introduced themselves. Susan Chiarella, Chair; Bryan O'Day, Cody Patten, Tanner Jacques, (Alternate); Justin Hastings and Steven Albrecht (Alternate). Absent, Peter Abair. Susan recognized Attorney for the Town, Shawn Tanguay.

Others present: A sign-in sheet was passed around and is attached to the back of these minutes.

The Board reviewed the Minutes from February 4, 2020. Janet announced a tape is running for transcription purposes. Justin noted page 6, first paragraph *"There was no other comments in sport change to support. Second paragraph "people vote for (add the word or) against. Susan changed page three, last paragraph, begin with "Attorney Brown continued to state that" Page four at 13th sentence begin a new paragraph before "The credible information" and add a new paragraph before "Attorney brown stated"* Justin moved to approve the minutes, with corrections, seconded by Bryan and all in favor. (corrected pages are attached to the back of these minutes).

At 7:33 Susan stated this is a continuation of the hearing begun on February 4th, to review an Administrative Decision issued on December 16th by the Board of Selectmen, concerning the request by the Kazenas through their attorney Sheridan Brown. The purpose of the hearing is to determine if the Board is going to overturn the Selectmen's decision. Susan appointed Tanner Jacques to step in in place of Peter Abair. She asked Tanner if he was comfortable doing so. Tanner stated it is clear in the minutes what has taken place and he has participated in the hearing process and listened to facts in the testimony and is happy to fill in. Susan announced here are 5 board members present.

Susan stated it has been brought to her attention that Attorney Brown feels she should recuse herself. Susan feels she has no reason to recuse herself. She has been and is unbiased in this and will continue to sit on the Board. None of the Board members objected to her serving on the Board.

Attorney Brown gave the Board the information they requested. The first item in the packet is the total numbers of dog transfers by year. Mr. Hastings had requested a breakdown for that first year they were in operation in Springfield from August 5, 2005 to March 9, 2006, the period before the Zoning Ordinance was amended. The total was 49. Of those, 33 were between August 5, 2005 and December 31, 2005, and 16 between January 1, 2006 and March 6, 2006. The numbers are a combination of puppies and adult dogs. Some of the numbers represented are also dogs that may not have come to the property but were transferred by their efforts to place dogs for other people. There is less of an intensity after Sue-Ann's husband passed and shows they have been operating at a lesser level since 2008.

Attorney Brown presented photos from 15 years ago of properties of some of the people who testified previously. Some showing the facilities, and some inside the house. He also included

screenshots from the State GIS database of the neighborhood of Hogg Hill Road which shows that nothing has really changed since 2003 at the Kazenas' property, but there has been a lot of change in terms of lot clearing in other parts of the neighborhood which could have an impact on what people are hearing.

Attorney Brown included the case of Cohen v Henniker which one of the abutters mentioned, regarding the context of grandfathered uses. He explained why the Cohen v Henniker case was not on-point for his client's request. The case cited an article from Attorney Bernie Waugh regarding constitutional reasons to protect grandfathered uses. Attorney Brown stated the article supports his interpretation that the grandfathered use and obnoxious use provision of the Springfield ordinance operates in parallel. If there is a noise issue, which they don't believe there is yet, that is not dealt with by extinguishing a grandfathered use. He read from an example of Attorney Waugh's article. If there is a noise issue, they are still entitled to have their kennel. They just need to deal with the noise and make sure it is not an obnoxious use. There are people who have raised issues of noise, but there have not been recordings or other evidence to substantiate it as coming from the kennel. His clients live at the property with the dogs, so they have a good idea of when there is barking. An offer was made to the Select Board by his clients, to pay for and install audio equipment at up to 4 of the properties of people claiming they get noise from the kennel. This would give real time sound data for comparison. The Select Board did not respond to the offer. Attorney Brown stated this was a very generous offer from his clients and underscores their confidence that they are not creating the noise issues.

The Board reviewed the documents. Chairperson Chiarella asked if there were questions from the Board?

Tanner asked if the pictures represent what the kennels looked like when they moved in in August 2005. Sue-Ann acknowledged they were. Attorney Brown commented that on NH Granit it can be seen what the kennels have looked like through the years. They sometime have roofs which are sun shades that often get removed due to snow load in the winter.

Justin stated the last time they met he was given a paper by from their former attorney Jennifer that stated "the only reason the town is potentially able to require a special exception is because the neighbors believe that they operate a kennel as a business. It is however, not registered as a business with the State of NH Secretary of State, it is not a commercial kennel, and it is not required to file with the State of NH Department of Agriculture. There is no separate tax return filed for a business. They have adoption fees for the dogs because of expenses for caring and training of dogs that does not result in a profit and most of the training is done off site although the hobby of training and breeding and rehoming dogs should not even be the subject of the special exception requirement" Justin stated he wondered why the attorney stated that it is not a business. Attorney Brown responded there is a difference of legal theories. Some people would say they don't run a business because they are not registered with the Secretary of State. For zoning purposes, you don't need to be registered with the Secretary of State, you don't need to turn a profit to be engaging in a business activity. There is difference of opinion as to where a non-commercial kennels fit in this scale. Non-commercial does not mean you are not selling puppies, or not making money, it is largely a hobby. From a land-use perspective if the town is of the opinion, they are conducting a business, they are not doing anything different now than

they were in 2005, and they have had that business since 2005. If it is not a business, then it is a hobby and maybe it doesn't fall under the zoning requirements. The whole issue is coming back to noise and trying to regulate noise. Whether they have a business or not, the noise is not going to change. They own dogs as pets, they breed their personal pets, so the dogs will still be there even if they stop selling dogs and stop executing contracts. He is not sure why the former attorney chose that argument, but the one thing that is consistent throughout is that they have always bred dogs and sold dogs. There are terms used for zoning purposes, and terms used in a commercial and non-commercial kennel business. The AKC says that what his clients are doing is a hobby. There has not been an attempt to tell the town anything differently as far as their activities. Their prior attorney chose to characterize it in a different way that he does not agree with.

Susan asked if the business filed an income tax return under Select Shepherds. Sue-Ann stated no. It is not separate from their personal returns.

Gene Hayes questioned how they were handling their income tax returns. Attorney Tanguay noted the floor has not been opened to the public at this time.

Tanner stated he does not have more questions. He has looked at the information presented and feels it answers what was requested of the applicant last week.

Attorney Brown noted in correspondence to the Town last week, he had asked if the Police Chief could be available for this meeting to speak to his experience responding to noise complaints. There is also another abutter, Jocelyn Colena, who is happy to speak. She has not had issues with noise despite being in the same neighborhood as everyone else. Attorney Brown had asked the Town for a police log and how the different calls were followed up on. There had been brief references in minutes from other meetings that sometimes there was noise and sometimes there was not. His clients were never issued citations. He got the police logs but has not received reports of the findings of those reports per the Right to Know.

Susan asked Attorney Tanguay to advise. Attorney Tanguay stated the issue before the Board tonight is whether this qualifies as a home business under the 1997 zoning ordinance. Whether or not there is noise has no impact on this meeting. Susan asked about the Right to Know issue. Attorney Tanguay stated that has no bearing on the Zoning Board.

Steve Albrecht stated at the last meeting Attorney Brown described the difference in the kennel world between a large commercial business and those which are hobbies. He asked this be explained again from the industry.

Attorney Brown stated in conversation with the AKC one of the problems with the new legislation is that by coming down to the range of transferring 25 dogs a year, you now must be licensed. This is getting into hobby breeders versus those that are not hobbies. Non-commercial does not mean you are not selling. It just means you are not taking in dogs from the public for boarding, you are not doing this as a sole business, you are basically doing this to sell the dogs you don't want to keep for yourself. A commercial kennel is larger scale, taking public borders, and doing it as a business. In the kennel world the Kazenas have a non-commercial kennel, but there is still selling of dogs.

Bryan stated in his mind two things either qualify or disqualify this as a home business in the ordinance, and that is whether "within" means "within". Attorney Tanguay advised Bryan to wait to have this conversation during deliberations.

There were no further questions or comments from the Board. Chair Chiarella opened the floor to public comments. She reminded people the Board is not rehearing the issues they heard before. The Board is here to decide whether the Select Board made an error and whether or not the Board is going to overturn that decisions.

Gene Hayes wanted to know what has changed from the time Steve Touchette came to this town for a Special Exception to operate a mechanic shop, which then went on to become a timber frame shop and is now a boat restoration business. Gene stated these uses came to this Board for approval to run a business. The business Steve Touchette had was part of Kazenas property at that time. He asked what has changed that is different for Steve Touchette than it is for this couple. Susan asked if Mr. Touchette was subject to the 1997 ordinance at that time. Gene stated that he was. Susan stated the Ordinance is the same. Bryan stated Steve operated a Commercial Business. The Kazenas are claiming they have a home business. Attorney Tanguay stated the conversation needs to be kept to the issue at hand. Gene gave some more examples from the ordinance and what Mr. Touchette was required to do.

Wayne Smith stated he has heard some questions as to whether what is going on might be considered a hobby which means it is not a business. His point being before the zoning variance came to be, what was going on in 2005 at 373 Hogg Hill Road that has a right to be grandfathered forever and what is the business that is being grandfathered? If there has been changes, the grandfathering goes away. He cited he has a copy of an LLC request for Select Shepherds. He would like proof that they have been in that business from 2005 to 2020.

Attorney Brown stated the proof has been given and is the proof in establishing grandfathering which is what the Board asked for. As has been stated, the business has been the same, the elements have been the same whether it is called a business or a hobby. There have always been dogs bred and sold, and multiple dogs on the premises, starting with the 19 that came in 2005. That won't change whether it is a business there. As to the activities on the LLC sheet, there are reasons not related to land use that he advised his clients to have an LLC. They have not changed the business they are doing on the site. They do training off site at a facility they lease in Grantham. What is being done there now is the same as what was done since 2005.

Gene Hayes presented some more information regarding LLC filing which expired in 2005. They filed again in 2008 which expired in 2013. If they were an LLC, they should have filed a tax return. The LLC lapsed again, and they refiled in 2017. That expired in January of 18, and they refiled again in July of 19. He stated they should be filing a tax return, they are a business

Susan stated information from the Secretary of State's website has no bearing on whether they are filing a tax return. There is no requirement for a business to register with the Secretary of State or to maintain a business name. A business name can expire. The Board has received testimony that they have been in business since 2005. The Secretary of State's records have no bearing on this.

Gene asked how this Board is going to justify that they were in business continually since 2005. Susan stated that is one of the reasons they asked for the records.

Attorney Tanguay stated the comment has been taken. If the Board wants to address the comments they can do so in deliberations. Susan asked if the public or Board had comments, or questions for the applicant. She asked Attorney Brown if he had anything else to add. There were no further comments.

At 8:10 p.m. Bryan made a motion to close the public hearing and enter into deliberations. The motion was seconded by Cody and unanimously approved.

Deliberations began. Susan reminded the Board they were to look at the ordinance, interpret it and see if it fits.

Tanner Jacques stated he has reviewed the information. The appellants have provided what the Board asked for and more. It comes down to whether the Board thinks this is a home business or not. The Board needs to interpret what is "within", and Attorney Brown has said the same thing. The ordinance talks about professional services conducted within the home. When he looks at the documents and some of the pictures of the kennels, to him that doesn't define within the home. To him it is within the bounds of the property but not within the bounds of the home. He doesn't consider this a professional service conducted within the home. To him this is something outside what a professional service is. He has no doubt the business started in 2005 when they moved in. He stated he agrees they have been conducting business since 2005 but that doesn't meet the standard of a home business based on that Ordinance.

Justin Hastings stated he agrees. For example, for years he had a neighbor who was an electrician that he never knew was there, because there was nothing happening outside the home for him to know that. He cited the examples of professional services listed in the Ordinance as those being operated inside the building.

Susan Chiarella said she too has a problem with the definition in the 1997 Ordinance. She feels what was envisioned was not the type of use the applicants have at this property because of the sentence in there that says, "does not change the character thereof".

Justin stated "within" is stated three times in the Ordinance and he goes by the three times rule.

Susan asked Cody for his interpretation. Cody stated obviously some of this happens within the building but the majority of it is outside.

Susan stated she is hard-pressed to see how there could be that many dogs inside. They would have to go outside one way or another.

Tanner stated he understands dogs go outside. If you are running that as a business or a hobby or in a professional fashion of some kind, it can't be done inside a building all the time. The idea of kennels outside for any extended period, to him says it is not an indoor activity and he does not think that is comparable to the other services mentioned in the ordinance.

Bryan stated were it other than from within the home, he feels they would comply. That or the noise would be obnoxious. One or the other would mean they do not comply.

Tanner stated with the obnoxious use, dogs bark, they make noise. The obnoxious use is not in dispute. No one is contesting that. The idea is that this a home business and does it meet the standards within that ordinance. To him that is what the Board is looking at.

Justin stated in most cases the hardest part is determining the spirit of the ordinance. This was written fairly clear to him that at that point in time they created the ordinance, they envisioned a home business being inside the home.

Hearing no further comments from the Board, Susan stated the Board needs to decide whether to overturn the Selectmen's decision of December 16, 2019.

A motion was made by Tanner to uphold the Board's decision. Justin seconded the motion. Attorney Tanguay suggested the language for the motion: "To uphold the decision of the Board of Selectmen in finding that the property at 373 Hogg Hill Road, does not constitute a home business in accordance with the 1997 Zoning Ordinance of the Town of Springfield." Janet asked Attorney Tanguay to restate the suggestion for clarity in the minutes.

Attorney Tanguay explained if the motion passes then the Board agrees with the Board of Adjustment this is not a home business. If the Board wishes it can make another motion contrary to that, but he is giving an example of what the motion would be.

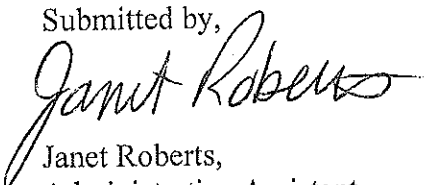
Tanner agreed the suggested language is acceptable to him. Janet was asked to reread the motion suggested by Attorney Tanguay.

Susan requested amending the motion to include the date that the Select Board's decision was made which was December 16, 2019. Bryan moved to second Susan's motion.

The motion was amended to read "to uphold the December 16, 2019 decision of the Board of Selectmen in finding that the property at 373 Hogg Hill Road does not meet the definition of a home business in accordance with the 1997 Ordinance of the Town of Springfield". The vote on the amendment was unanimously approved by the Board. Tanner agreed to the amended language to his original motion. Cody seconded the amended decision. With no further discussion, the Board voted unanimously to approve the motion. All 5 members voted in favor of the motion.

At 8:25 p.m., a motion was made by Tanner to adjourn, seconded by Justin and unanimously approved.

Submitted by,



Janet Roberts,
Administrative Assistant

ZONING BOARD SIGN IN SHEET/DATE: 2/13/2026

PRINTED NAME	ADDRESS	ABUTTER? YES/NO
Sheridan Brown	PO Box 1656 Grantham, NH 03753	No
Sue-Anne happens	373 Hogg Hill Rd 7078 Springfield, NH 03784	
Audrus Kazenas	343 Hogg Hill Rd Springfield, NH	
Gene Hayes	1260 Stony Brook Rd. 3rd Hogg Hill Rd.	Yes
Roger "Whit" Smith	159 Georges Mills Rd	No
Ruth Cutting	211 Sandown Hill	No
Susan Cutting	266 Sandown Hill Rd	No
Wayne Smith	360 Hogg Hill Rd	YES
Pam Laurie	542 HOGG HILL RD	No

ZONING BOARD SIGN IN SHEET/DATE: 2/13/2020

PRINTED NAME	ADDRESS	ABUTTER? YES/NO
Marla Binzel	511 Hogg Hill Rd	NO
Judy Bucha	542 Hogg Hill Rd	NO
Christine White	230 Hogg Hill Rd.	NO
B Manning	843 FOUR CORNERS RD	NO
Dick Hendel	103 WOODCREST	NO
Tamara Butcher	249 Webster Pass	No
George McCusker	61D Boston Rd	NO
Jocelyn Colena	255 Hogg Hill Rd	NO
THM VILLAGE	2750 MAIN ST	NO

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

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~~ 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 *added 2-13-16* 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