

Mr. Burows asked if proper notification had been given to the applicants prior to the special use permit being declared null and void. The Planner responded that adequate notification had been given to the applicants.

APPLICANT TESTIMONY:

JEFFREY/YVETTE FITZGARRALD – 27601 N CROSBY ROAD – PROSSER, WA 99350 stated that they were applying for a conditional use permit to operate a kennel for the rescuing of dogs. Discussion with the Board regarding their prior special use permit, miscommunication between the applicants, building and planning departments with regards to the word "permit". The kennel would be a non-profit business.

Mr. Chigbrow asked the applicants how many dogs were currently on site. The applicants replied 10 dogs, six were the applicants and four were foster dogs.

Mr. Chigbrow reviewed that the applicants had applied previously for a kennel permit, which was approved and then declared null and void. Now, the applicants are presenting to the Board another conditional use permit for the operation of a dog kennel. He asked them to outline progress made to date on the kennel building.

The applicants replied that they were ready to tape, mud, paint the sheet rock, seal the concrete and then the building will be ready to house the dogs. The kennel should be ready within a month for occupancy.

Jeffrey Fitzgarrald informed the Board about the ventilation system, heating/cooling system, water would be underground or in the building itself, so there would be no issues with regards to the water freezing. The applicants were trying to construct this kennel without having to secure a loan.

Mr. Burows asked the applicants if they had read and understood the conditions of approval affixed to this conditional use permit, especially Condition No. 1, which states that the business cannot be operated until such time as all the conditions of approval have been satisfied.

The applicants replied that they had read and understood the conditions of approval.

Mr. Burows stated that he had an issue with the operation of a kennel business when in fact the conditions of approval have not been satisfied and the applicants stated that they had read and understood all the conditions affixed to the conditional use permit, especially Condition No. 1 which states that a business cannot be operated without first all of the conditions of approval being satisfied. He continued by asking the applicants that if the permit were to be approved could they live up to the conditions of approval, seeing as that was not the case with the prior special use permit.

Mrs. Fitzgarrald responded that they would come into compliance.

Mr. Chigbrow asked if Code Enforcement had been to the site. The applicants replied that the only necessity was to obtain a conditional use permit.

Mr. Burows asked the applicants if they understood the other eleven conditions of approval affixed to the conditional use permit.

Mr. Page asked the Planner if the permit would be for only 12 dogs, including the owner's six dogs. The Planner replied that to be correct, but puppies under the age of six months were excluded from the count.

Mr. Page asked Mrs. Fitzgarrald if she would be breeding any of the dogs. She replied that there would be no breeding as all the dogs are either spayed or neutered.

Mr. Chigbrow asked the applicants how the solid waste would be disposed. The applicants replied it would be bagged and put in the waste receptacle provided by their garbage carrier.

Mr. Chigbrow asked if the applicants would be providing an exercise facility for the dogs. The applicants replied a 40'x20' exercise yard would be constructed and privacy panels would be installed.

Mr. Chigbrow then asked the distance from the kennel to their closets neighbors. The applicants replied about 700 feet to a neighbor, but that was not the closet.

Mr. Chigbrow asked if the animals would be allowed to run outside of the fenced area. The applicants replied that would not be allowed.

Mr. Chigbrow asked how the applicants would address barking. The applicants replied that there would be some barking, but hoping that the kennel would eliminate a majority of the barking issue. In addition, the dogs would be housed inside the kennel at around 8 or 9 p.m.

Mr. Page asked if there were dogs or stray dogs roaming the vicinity. The applicants replied that was an ongoing problem in the area.

Mr. Chigbrow asked if any neighbors complained about the barking of dogs. The applicants replied only one neighbor has complained.

PROPONENT TESTIMONY:

ROBERT WEBER – 119501 W MCREADIE ROAD – PROSSER, WA 99350 stated that he does not have an issue with the conditional use permit for the operation of a dog kennel for stray dogs as long as they meet the conditions of approval. Additional questions were regarding property values, will this permit be transferable, limited to 12 dogs or more, exercising of the dogs addressed with the issuance of dog runs with privacy fencing, barking noise controlled by housing the dogs at night and even at times during the day. If the applicant violates the conditions what does it take to have the permit revoked? Barking of dogs is not really enforced by the Sheriff's office. He would like the Board to review Condition No. 6 regarding kenneling the dogs at night – hours. He does support this permit.

Mr. Chigbrow explained Condition No. 1, violation of operating without a permit, code enforcement and contacting the Sheriff.

HAROLD PLEASANT – 34407 N CROSBY ROAD – PROSSER, WA 99350 – his property borders on the Southside of the applicants' property and he supports the development of a dog rescue kennel.

JANET PLEASANT – 34407 N CROSBY ROAD – PROSSER, WA 99350 – supports this dog rescue kennel.

DAVID FELICETTI – 119904 W 289 PR NW – PROSSER, WA 99350 – stated that he was the second or third closets neighbor. He supports the development of a dog rescue kennel.

OPPONENT TESTIMONY:

PHIL PHILLIP – 120003 W 289 PR NW – PROSSER, WA 99350 – opposes the kennel. He read and submitted a list of questions and would like a written response to his questions. (BOAR 1.1) The expressed concerns are: hours of operation and if so what would the hours be, protocol for removal of dead dogs, adequate space for delivery trucks and customers to turn around without creating a traffic hazard, outside lighting required, annual inspections of any kind to be conducted on site, such as health district, fire, will there be any signage, how will the dogs affect the existing wildlife, dog waste getting into spring creek or tributaries, dust control, would the entrance to the facility need to be paved, who will determine the age of the dogs – six months older or younger, liability insurance to cover dogs if one gets loose and bites someone and if so what would be the liability amount, locks on the doors in or around the dog kennel, procedure put into play if a fire occurs and no one is around to rescue the animals, emergency vehicles, health district requirements, critical area ordinance and provisions in case of a power failure with regards to functionality of the kennel, such as heating and cooling.

SHARON PHILLIP – 120003 W 289 PR NW – PROSSER, WA 99350 – was the closets neighbor to the applicants. She voiced concern over barking dogs being a health hazard, such as elevating blood pressure and lack of sleep, the dog kennel should never have been approved to begin with, traffic entrance to the site was it safe, will the kennel facility be constructed such as to provide adequate cooling and heating for the dogs, and stench from dog waste will be overwhelming. The proposed kennel operation was currently out of compliance as they were operating without a permit.

Mr. Chigbrow stated that the applicants would be installing a swamp cooler in the kennel facility.

Mrs. Phillip replied that her family had a swamp cooler in a manufactured home when she was younger and all it does is make it humid and does not cool the building down.

Mr. Page asked if she currently smelled any odor coming from the applicants' site. Mrs. Phillip's replied not in the winter, but summer month's bigger horse flies. She again reiterated to the Board that barking dogs was a health hazard.

Mr. Page asked Mrs. Phillip's if she had any information to back up her statement that barking was a health hazard. Mrs. Phillip replied not with her, but would submit information if requested by the Board.

Mr. Chigbrow asked Mrs. Phillip if she had contacted the Sheriff's office on this kennel operation. Mrs. Phillip replied that she had not contacted the Sheriff's Office.

APPLICANT REBUTTAL:

JEFFERY/YVETTE FITZGARRALD 27601 N CROSBY ROAD – PROSSER, WA 99350 addressed concerns presented by Mr/Mrs. Phillip, regarding double wall construction, which was not required by the building code. They did not have a problem with the Board imposing hours of operation, such as letting the dogs out of the kennel at 7 or 8 a.m. and locked up for the night at 8 or 9 p.m. Paved entrance and dust control were not required. The applicants'

veterinarian taught her how to determine the age of a dog by their teeth. The business would be covered by their homeowners insurance. Double locks would be placed on the doors of the kennel. Fire not addressed in the building permit nor were sprinklers. They would not permit the dogs to run loose.

Mr. Chigbrow addressed Condition No. 7 which states: "That the property owner and the proprietor(s) of the business shall comply with all requirements of the Benton County Building Department, the Benton County Fire Marshal, and all other local, state and federal regulations pertinent to the conditional use permit. The requirements of or permission granted by the Board of Adjustment shall not be construed as an exemption from such regulations. The applicants shall continue to meet all such requirements while Conditional Use Permit CUP 11-10 is in effect."

Yvette Fitzgarrald stated that she would comply with all the requirements prior to operating the kennel. In addition, no signage would be posted, visits by appointment only, they do not give out their phone number and the volume of customer traffic to the kennel would be maybe three per month.

Yvette Fitzgarrald would contact a vet upon expiration of a dog and the situation would be handled correctly. A yard light had been installed already on their property.

Yvette Fitzgarrald addressed chronic noise in the area stating that the farming operations and cherry cannons create more of a health hazard than the barking of the dogs.

Mr. Burows commented that the Board would be reviewing testimony presented with regards to the proposed kennel permit and determine whether it would or would not be compatible with the surrounding area.

The Chairman closed the hearing for the taking of further public testimony and moved onto Board discussion and findings of fact.

Mr. Burows informed the Planner that Mr. Phillip's questions needed to be answered regardless of the outcome of this conditional use permit.

Mr. Chigbrow commented that the dogs were currently on site without a kennel permit having been issued.

Mr. Page responded that the applicants are caring for the animals and making an effort to complete the kennel facility. He felt that a specified period of time should be affixed to this conditional use permit for the completion of the kennel, thereby allowing the dogs to remain on site.

Mr. Burows replied that the applicants would need to come into compliance within 30 days in order to allow the dogs to remain on site.

Mr. Chigbrow felt that the Board did have the ability to allow the animals to continue to reside on site, but a time limit needs to be affixed for the applicants to come into compliance with the conditions. Traffic to this site for the kennel operation on Crosby or McCreadie Roads would not be an impact to the surrounding area. Time limit to be set for allowing the dogs outside at 8 a.m., out for exercise at least 2-3 times per day and then back inside the kennel at 8 or 9 p.m.

Mr. Burows stated that the dog runs could be connected to the kennel thereby allowing the dogs to come and go on their own.

Mr. Page would like to add a condition that no breeding of dogs would be allowed, permit is non-transferable, and that the hours of operation would be from 7 a.m. to 9 p.m.

Mr. Burows would like to have the applicants construct a fenced in dog run; privacy panels would be optional – however the applicants did mention that they might install privacy panels.

Mr. Page commented that this permit would need to be placed on the Code Enforcement annual list for compliance along with the Fire Marshal.

MOTION: Mr. Burows made a motion which was seconded by Mr. Page that the Board of Adjustment, pursuant to the aforementioned controlling factors, finds that the application of Jeffrey/Yvette Fitzgarrald – CUP 11-10 be approved with conditions as noted in the Staff Memo dated December 22, 2011 along with the following added conditions: Condition No. 13 – the dogs must be kenneled indoors between the hours of 9 p.m. and 7 a.m. Condition No. 14 –the dogs must have a fenced area for proper animal exercise during the daylight hours, Condition No. 15 – no breeding of dogs will be allowed on site and Condition No. 16 – CUP 11-10 will not be transferable with the sale of the property, Condition No. 17 – the applicant will need to come into compliance within 30 days of the decision made by the Board of Adjustment or the dogs will need to be removed from the site and that the Chairman in conjunction with the Secretary of the Board of Adjustment prepare and adopt written findings and conclusions that articulate and are consistent with the findings, conclusions and/or decisions made by the Board of Adjustment tonight. Motion carried.

MOTION: Mr. Burows made a motion which was seconded by Mr. Chigbrow that this action be continued to the March 1, 2012 Board of Adjustment Hearing – 7 p.m. – Planning Annex – 1002 Dudley Avenue – Prosser, WA for the signing of the findings of fact on CUP 11-10 only, no public testimony will be permitted. Motion carried.

PLANNING DEPARTMENT REPORTS AND DISCUSSION: NONE.

UNSCHEDULED VISITORS: NONE.

The Chairman adjourned the Board of Adjustment Hearing at 9 p.m.



BRENT CHIGBROW, CHAIRMAN
BENTON COUNTY BOARD OF ADJUSTMENT

Recorder: Carel Hiatt