



**BOARD OF ADJUSTMENTS MINUTES**

**15 JANUARY 2015**

**Item**

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- 1. Administrative Appeal – Wild Bunch Kennel ..... 2**

**Present:** Lee Atwood, Nolan Gunnell, Brooks Tarbet, Hal Olsen, James Swink, Megan Izatt

**Start Time:** 06:01:00

**Atwood** welcomed.

**06:02:00**

### **Agenda**

Adopted with no changes.

### **Minutes**

*Gunnell* motioned to approve the minutes; *Tarbet* seconded; **Passed 4, 0.**

**06:03:00**

### **#1 Appeal – Wild Bunch Kennel (John & Caryn Mullin)**

**Joe Chambers** as the Board of Adjustments you sit in a quasi-judicial capacity and the standard that you usually apply is to sustain the Planning Commission unless their action is arbitrary, capricious, or illegal. Last time we decided that the findings they had made were conclusions. They had made the conclusion that the kennel was incompatible and I gave the example of a Boston's fan and Yankee's fan. You sent it back on the advice of your attorney and I agreed with that move. The Planning Commission has to comply with the Utah code and what my client applied for was a conditional use permit (CUP). Under the law it says that a land use ordinance may include conditional uses and provisions for conditional uses that require compliance with standards set forth in an applicable ordinance. This application was made in accordance to state law and the ordinance. State law further goes on to state that a CUP shall be approved if reasonable conditions are proposed or can be proposed to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards. It also states if those reasonable anticipated detrimental effects cannot be mitigated then a CUP does not need to be approved. I don't anticipate you agreeing with my argument and that is fine. But my reading of what you wanted to do last time was to simply sustain the findings of the Planning Commission but you sent it back to them. But they haven't done their job for creating reasonable conditions to mitigate the detrimental effects. The Planning Commission bypassed that and didn't even try to mitigate the conditions. I don't anticipate you to accept this but I have to make this argument to preserve my client's right. I think you have the right to send it back to them again because they once again haven't done their job in providing reasonable mitigation for the detrimental effects for this application.

**Chris Harrild** it is the applicant's responsibility to provide mitigation measures. If the proponent had provided ways to mitigate noted impacts the Planning Commission would have discussed those measures and made as decision as appropriate. However, when this application came before the board those mitigation factors were not in the application. Staff supports the Planning Commission's denial of the CUP request.

**Swink** if you feel like you are in the position to make the decision this evening it should be in a written form and the decision should be issued with your findings of fact.

**The Board** discussed whether to deny it or send the application back to the Planning Commission. With the clarifications of the findings some Board Members felt that the Planning Commission had done their job. The burden for mitigation of detrimental effects is on the applicant not the county. The Board of Adjustments has 15 business days to issue a final written decision with the Board Chairman's signature.

**Caryn Mullin** I am the applicant and we did meet the requirements when this was initially proposed. We said that it was going to be built like a home and that noise would not travel beyond the home. We were not given conditions and we were told they cannot apply conditions to it because the law wouldn't let them.

**Harrild** Conditions are applied that is why it is a CUP. We cannot apply a condition to something we are not given. It is up to the applicant to supply that information for consideration of mitigating conditions.

**Josh Runhaar** also, perhaps part of the applicant's confusion stems from one of the discussions that we cannot apply conditions based on breed or type of dog. State law won't allow us to. The other discussion could be that we won't impose conditions if it won't mitigate the impact or we won't go down the route of trying to impose conditions. The other could be that if we can't see a way to mitigate the impact we would deny. I don't know if that is the case of this misunderstanding but certainly we would apply conditions if they can be accomplished.

**Swink** that was one of the issues before that if they cannot be mitigate by what could be imposed or what has been proposed, it can be denied. If the findings of the Planning Commission are sufficient for your consideration, then you can make your decision on denial or approval or sending it back to the Planning Commission and my office will help you draft anything that is needed.

*Tarbet motioned to uphold the Planning Commission's decision for denial based on the following finding of fact;*

- 1. The findings for denial as stated by the Planning Commission are in compliance with state code.*

*Olsen seconded; Passed 4, 0.*

Since there are no pending items for the Board of Adjustments the minutes will be emailed out and with the consent of the Board approved through email. The final written decision will also be attached to the minutes.

**Adjourned**

**06:19:00**