Andrew Murray

From: Joel Spencer <Joel.Spencer@jbsunited.com>
Sent: Tuesday, August 14, 2012 11:49 AM
To: Andrew Murray
Subject: signed petition
Attachments: Signed petition against kennel 8-13-12.pdf

Andrew,

Please find a new copy of the signed petition against the dog kennel on Mule Barn Road. Two more individuals came by my home to sign it last evening when they heard about the petition.

I do have a question for you. If you go to the web site **littlepawsontheprairie.com** you will see that the proposed site is already operating a kennel operation called Country Charm Boarding, Inc. This apparently opened on July 4th. They state and show pictures that they have outdoor kennels, and they give a daily fee for this operation. I thought the hearing was for a special exemption so that they could use their 23 acres for this purpose. Do they already have approval to do this? We already are dealing with noise from what they are doing, and it appears that their operation they are running now is not approved or legal. Is this a correct assessment? This hearing is to get approval for them to be able to do this type of operation, not just to make it bigger, right?

If the above is true and they are not allowed to operate a kennel at this location, will this shut their current unapproved operation?

We neighbors have already been dealing with this issue, and this special exception use of their property has brought it into even better focus. We feel that this disregard to zoning and prior approval clearly shows that they will not adhere to any restrictions, ordnances, policies, etc. put forth by Westfield. Their current disregard for the zoning process and their neighbors clearly demonstrates that any approval will be used inappropriately and in conflict to Westfield Policy.

As the staff report states, special exception uses are those uses traditionally affected with public interest, and are usually entirely private in character but of a nature that their operation may give rise to unique problems with respect to their impact upon neighboring property and public facilities. These exceptions must be put against a list of criteria. Given opposition by 100% of the neighbors and the evaluation by a real estate agent with 15+ years specializing in rural properties, this special exception fails against the second item on the list of criteria, "…not to be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, not substantially diminish and impair property value within the neighborhood".

If you could help me understand the above questions, and help provide this information to the board prior to the meeting this evening, that would be greatly appreciated.

Thank again for your efforts in helping us gain clarity.

Joel

Joel Spencer
19046 Mule Barn Rd. Westfield, IN 46074
317-439-0056 Cell

TOWN OF WESTFIELD, INDIANA

LEGAL NOTICE

WESTFIELD-WASHINGTON TOWNSHIP
BOARD OF ZONING APPEALS

The Board of Zoning Appeals will meet on the 14th day of August 2012, at 7:00 p.m. at Westfield Town Hall, 130 Penn Street, Westfield, Indiana 46074 for the purpose of holding public hearings and acting on the following case(s):

- 1208-SE-01; 19123 Mule Barn Road. John and Sandra Hutzler are requesting approval of a special exception use in the AG-SF district related to the operation of a kennel/boarding facility for dogs located on 23 acres.

- 1208-VS-09; 19123 Mule Barn Road. John and Sandra Hutzler are requesting two additional Variances of Standard from the Westfield-Washington Township Zoning Ordinance, as follows: (WC § 16.04.100.2.b.vii) to allow the total square footage of accessory buildings to exceed the total square footage of the principal building by 1,219 square feet; and (WC § 16.04.100.2.c.i. (2).(ii)) to allow for an accessory structure to be erected in the front yard of the principal structure.

Case files are available for public review in the Community Development Department, Westfield Town Hall. Interested persons desiring to present comments either in writing or verbally will be given the opportunity to be heard at the aforementioned time and place.

Westfield-Washington Township Board of Zoning Appeals

By: Sandra J. Hutzler, Petitioner
19123 Mule Barn Road
Westfield, IN 46074
317-867-0308

By: John Hutzler, Petitioner
19123 Mule Barn Road
Westfield, IN 46074
317-867-0308

By signing below, neighbors of the proposed location above show their opposition to the above requests at 19123 Mule Barn Road. We wish the Board of Zoning Appeals to deny these requests.

Signature	Address
	19025 Mule Barn Rd. Westfield
	19046 Mule Barn Rd. Westfield
	18909 Mule Barn Rd. Westfield
Gordon S Horney	19005 Mule Barn Rd Westfield
Victoria L Horney	19005 Mule Barn Rd. Westfield
Hank Walker	18863 Mule Barn Rd Westfield
Roxanne Walker	18863 Mule Barn Rd Westfield, In
	3215 W 193RD ST WESTFIELD IND.
	3501 W 193ST
	3501 W 193ST Westfield, IN
Joel Watson	3738 W 193 RD STREET WESTFIELD IN
	3231 W. 193rd St., Westfield, In
Cherie Stuart	3231 W 193rd St., Westfield, In
Susan Clusston	4502 W. 141st, Zionsville, IN 46077

August 10, 2012

To Whom It May Concern:

I have been asked to give my professional opinion of the proposed dog kennel facility for Mule Barn Road.

If this facility is put in it will hurt property values for the surrounding properties. We have seen this in other areas where there is a kennel. The increased traffic and barking gives a commercial feel and value to a residential area.

Sincerely,

Lisa Kercheval Aerne

F.C. Tucker Company, Inc.
100 Lakeview Drive
Noblesville, IN 46060
317-776-0200
FAX 317-776-6630
www.talktotucker.com

Andrew Murray

From: Paul Cluxton <pcluxton8@sbcglobal.net>
Sent: Monday, August 13, 2012 5:19 PM
To: Andrew Murray
Subject: 19123 Mule Barn Road

Follow Up Flag: Follow up
Flag Status: Flagged

To the Westfield-Washington Board of Zoning Appeals in response to the certified letter which I received on August 4, 2012, regarding the request from John and Sandra Hutzler for a dog kennel/boarding facility to be located at 19123 Mule Barn Road:

As a property owner of acreage located near 19123 Mule Barn Rd., I object to the granting of a special exception use in the AG-SF district for this business based on the noise which is certain to result from housing multiple dogs on the site. For 48 years (1957-2008) my parents lived at 3834 State Rd. 32 West in Jolietville which is diagonally across the highway from the location of a kennel currently being operated as the Bed and Biscuit Kennel, so I'm well acquainted with the noise which a dog kennel/boarding facility produces. I don't believe that allowing a kennel to locate at the 19123 Mule Barn address will enhance the value of nearby properties. In fact, I expect that it will result in a devaluation of those properties.

I note that in the Procedural Findings, Sec. 2 (Exhibit 1) for 1208-VS-09 this statement is made: *The proposed structure should not have a negative impact on surrounding property owners, as a majority of the surrounding property is farm land.* I would point out that the land use of the +/- 23 acre plot for the proposed kennel site was for many years agricultural until the long time family farm of which it was a part was sold and subdivided for building plots. The present farm land which lies close to the Hutzler property may some day be offered for sale as building lots as well. There are many people who, given a choice, would not choose to purchase land near a dog kennel in order to construct a new home. From that standpoint, if the variance for the kennel is approved it will be to the detriment of the value of the undeveloped land located near the property in question. There is an appreciable difference in the price per acre for a building lot as opposed to that of farm land.

Therefore, I would ask that you not approve the request for a special exception use to operate a kennel/boarding facility at the Mule Barn location referenced above.

Sincerely,
Susan Cluxton

Andrew Murray

From: Harpenau, Lisa <Lisa.Harpenau@CNOinc.com>
Sent: Tuesday, August 14, 2012 8:20 AM
To: Andrew Murray
Cc: lisa_harpenau@hotmail.com
Subject: RE: Petition 1208-SE-01_John and Sandra Hutzler

Dear Mr. Murray,

Thank you for your prompt response. While I would like the opportunity to present my opposition in person during the hearing, below are the objections I have regarding this petition in the event I am unable or have insufficient time. I plan to primarily focus on item I. below in person, but offer the remainder for your consideration.

I. The petitioners have filed for a special exception use in the AG-SF1 District related to the operation of a kennel/boarding facility for dogs located on 23 acres. A special exception use may be approved only upon the determination in writing that, among other things, "the special exception will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property value within the neighborhood."

According to the petition document, it was found that: "It is unlikely that the submitted proposal for the requested special exception would be injurious to the use and enjoyment of other permitted uses in the immediate vicinity. It is also unlikely that the submitted proposal for the requested special exception would substantially diminish or impair property value within the neighborhood. The surrounding properties are agriculture and large single-family residential uses. The nearest residential structure would be approximately 600 feet from the proposed kennel structure. Any feedback from adjacent property owners should provide insight regarding the impact on adjacent properties."

I am an owner of the adjacent property to the premises located at 19123, and I strongly disagree with the findings above and offer the following in support of my opposition. First, the dogs currently on the property bark at late hours of the night disrupting me and my family. I have witnessed up to 6 dogs on the premises at one time. According to the website (www.countrycharmboarding.com), the new structure will house 18 additional kennels only to increase the barking at late hours of the night. Secondly, the petition states that the property at issue contains a fence and tree line at the south end of the property (the property line between 19123 and 19025, my property). While there does exist a fence, it is not at a height to ensure no dogs will escape the premises. Moreover, it is unclear whether the dogs can burrow underneath the fence. There also exists a tree line, however, this tree line does not hide the premises or the 23 acres where the dogs will likely be roaming. I will supply pictures of the tree line and fence during the hearing. Thirdly, the dogs will not likely be solely retained within the accessory structure. According to the Company's website (www.countrycharmboarding.com), the dogs will be roaming free within the 23 acre property. This will result in more dogs congregating at the property line adjacent to my property. Currently, the existing dogs bark at me and my family and intimidate my 2 year old child. An additional 18 kennels will only increase my concern that my child will be intimidated by strange dogs barking at her. Fourthly, with the potential for more dogs, including rescue dogs with pre-existing behavior issues, my fear that the dogs will escape from the premises and harm my family is of concern. Lastly, there has been no assessment of how my property value will be impacted by a 18 kennel dog boarding facility. Several of my neighbors oppose this petition leaving me to conclude that having a dog kennel as a neighbor is undesirable and likely to negatively impact my property value. As such, I respectfully disagree with the conclusions in the petition. I fear that the

potential for 18 extra dogs in the property adjoining mine will significantly reduce the ability of me and my family to enjoy our property, and will diminish and impair my property's value.

There exist a precedent on this issue that I feel should be considered by the Zoning board. The Indiana Court of Appeals heard a similar case in 1998 in *Scott* v. *Marshall County Board of Zoning Appeals,* 696 N.E.2d 884. In Scott, the Zoning Board heard a similar special exception petition regarding a kennel on the property which was zoned A-1 (agricultural). The Zoning Board denied the petition and concluded that "the special exception [would]… be injurious to the use and enjoyment of other property in the vicinity [and] . . . diminish and impair property values within the neighborhood." *Id.* at 887. The Court of Appeals upheld this decision because there was more than sufficient evidence to not approve the petition. *Id.* The Court then stated the following:

"There are four to five homes within a 600-foot radius of the proposed kennel site. Although the land around the site is zoned A-1, it is primarily a residential area. The Scotts were housing seven dogs at the time of the hearing, despite the zoning ordinance restrictions, and neighbors at the hearing complained that the dogs barked at various house during the day and night and noise was already a problem. The Scotts' request was for a "10 dog kennel." Therefore, any noise interference at the time of the hearing with only seven dogs would more than likely become worse with ten. Further, the size of the proposed kennel, 2,244 square feet, would provide sufficient room to house more dogs than ten in the future." *Id.*

The present petition and the Scotts' case are nearly indistinguishable. The premises at issue as well as the houses in the vicinity are zoned Agriculture/Single Family 1 with the purpose to accommodate agricultural land uses and large-lot single family residential land uses. The petitioners here are requesting a 2,160 square foot dog kennel which will not only increase the existing noise problem for me and my neighbors but will also be injurious to my ability to use and enjoy my property and will diminish my property's value. As such, I respectfully request that the Zoning board deny this petition.

II. The property located at 19123 Mule Barn Road has been operating as a dog rescue and boarding facility since at least 2009. This is according to the Company's website and Secretary of State's records. In 2009, a nonprofit organization called Little Paws on the Prairie, Ltd. filed its articles of incorporation. According to the website, Little Paws on the Prairie Ltd operated as a non-profit dog rescue and boarding facility. *See http://littlepawsonthepraire.com.* In 2012, a for profit organization called Country Charm Boarding, Ind. Filed its articles of incorporation. According to the Company's website, it offers boarding and daycare facilities for dogs in addition to the dog rescue. *See http://www.countrycharmboarding.com.* Pursuant to W.C. § 16.04.030 B2 an owner of a premises zoned AG-SF1, can only use the premises for the "raising animals for biological purposes," or "raising animals for furs or pets" by filing a petition for special exceptions. The above referenced petition is the only petition which has been filed by the owners of 19123 Mule Barn Road and therefore the land has been used for purpose for which have not been approved by the Zoning Board.

III. After reviewing the petition and supporting documents, there are several questions I believe should be answered before the Zoning board should consider this petition.

1) How will this facility ensure that all dogs on the premises have current vaccinations?
2) How do we know there wont be increased traffic to an already busy and unsafe road?
3) How will the property owners ensure that the animal waste is disposed of properly to reduce any unnecessary and unpleasant odors?
4) Will this commercial facility put an burden on our well water supply?
5) How many potential dogs can this facility house?

Thank you for allowing me the opportunity to present the above opposition. I will be present during the hearing with my fellow neighbors to oppose this petition. If you have any questions, please do not hesitate to contact me at 317-408-1965.

Sincerely,

Lisa Harpenau

From: Andrew Murray [mailto:amurray@westfield.in.gov]
Sent: Monday, August 13, 2012 2:35 PM
To: Harpenau, Lisa
Subject: RE: Petition 1208-SE-01_John and Sandra Hutzler

Hi Lisa,

The petitioner has only submitted one special exception petition to permit the use of dog kennel/boarding facility. Kennels are a permitted use by special exception under the Agriculture/Single-Family 1 district.

Thanks,

Andrew P. Murray
Associate Planner
City of Westfield|Economic and Community Development|www.westfield.in.gov

(Office) 317.804.3170|(Direct) 317.379.9080

From: Harpenau, Lisa [mailto:Lisa.Harpenau@CNOinc.com]
Sent: Monday, August 13, 2012 2:27 PM
To: Andrew Murray
Cc: lisa_harpenau@hotmail.com
Subject: Petition 1208-SE-01_John and Sandra Hutzler

Dear Mr. Murray,

I am writing in regards to the above referenced petition. I am the neighbor of the Hutzler's and reside at 19025 Mule Barn Road. While I will be attending the public hearing tomorrow to oppose the petition, I wanted to ask you a few preliminary questions regarding this petition. Once I receive answers, I will submit additional information to you before or during the public hearing. I appreciate your willingness to provide me with the following information:

1) Have the Hutzler's applied for any other special exception uses other than Petition 1208-SE-01 regarding the use of the premises for a dog kennel?
2) Are dog kennels considered a permitted use under the "raising animals for biological purposes" special exception found in WC § 16.04.030 B.2.?

Thank you for your time.

Sincerely,

Lisa Harpenau
Director, Regulatory Affairs
317-817-5638
lisa.harpenau@cnoinc.com

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