

Board of County Councilors Inquiry Response – (APC2008-06190)

Inquiry: Request to amend Title 40.260.110 (2)b Kennels, allowing commercial kennels in operation after April 15, 2011 to be approved on less than five (5) acre parcels and further amend code such that the deadline to submit a fully complete application by August 15, 2013 be removed or amended to a future date.

Inquiry Date: March 4, 2015

Councilor: Mielke

Community Development Staff Review

Responding Staff: Marty Snell, Paul Scarpelli, Kevin Pridemore, Chris Horne, Bill Richardson

Response Date: April 28, 2015

Background/Facts

- Title 40.260.110 has undergone numerous code revisions in 2012 and 2013.
 - These revisions were in an effort to bring all known commercial kennels into compliance with state and local regulations.
 - Provisions in the code rewrites were granted as the county worked hand-in-hand with both kennel operators and affected citizens.
 - Noise nuisance violations were changed from a scale based on dBa sound measures to dBc, however in 2015, this will revert back to dBa due to lack of ability for staff to enforce and challenges of kennels to comply.
- The Von Shipman commercial kennel breeds and sells Rottweilers.
 - They had not received any approval, permit or otherwise to legally operate prior to the kennel code amendments in 2012.
 - They maintain a website and do not refute that they are an active commercial kennel.
 - They have thus far not allowed staff to inspect their property, the care of the animals, the number of animals or any mitigating work they have constructed to abate noise.
- John and Kelly Shipman own and operate the Von Shipman kennel
 - They were active participants in prior code rewrites.
 - Code Enforcement began notifying them of a code violation in June 2011.
 - Enforcement action, including penalties, were stayed in cases where applicants appeared to be moving through the permit process and during the process where the code was being updated by the Board of County Commissioners.
- The Shipmans applied to permit their kennel on August 15, 2013.
 - Community Development staff (Land Use Review) approved the Shipman's kennel application with conditions on May 23, 2014.
 - The Shipmans appealed the conditions of the permit.
 - The neighbors appealed the issuance of the permit.

- The Hearings Examiner denied the appeal, and as of November 21, 2014 the Shipmans missed the deadline to appeal to Superior Court, claiming Commissioner Mielke was involved and would resolve the matter.
- On November 21, 2014 a letter was sent by Paul Scarpelli, Code Enforcement Manager indicating they can no longer operate their kennel from its current location and further legal action will be taken if the following actions were not met:
 - Cease and desist all commercial kennel operations by February 21, 2015.
 - An inspection of the property will be required on February 23, 2015 to verify compliance.
 - All advertising including websites and social media should be shut down or otherwise changed to reflect your new business location, if any.
 - If they have nine or less of their own personal dogs left on the property by February 21, 2015, they will still be considered private kennel and must abide by the conditions outlined in the kennel ordinance, including licensing.
- None of these requirements have been met as once again staff is being told to wait for further code amendments.

General Discussion

- The Von Shipmans have years of noise complaints lodged against them.
- Staff is continually denied access onto their property.
- Clarifying the code to recognize 'kennels in operation' (adding 'legally or not legally') is a bit nonsensical. If a kennel was 'in operation' legally, there would be no need to apply under the pertinent code.

Community Development Staff Recommendation

The code has been rewritten continuously for years. Continuing to amend codes to fit the needs of one case is less than effective, provides little or no certainty for interested or potentially impacted citizens, and creates significant challenges to complaining parties and staff who must work with both parties to the dispute. This case has gone further than most, and the Hearing Examiner has laid out very clear guidelines. Either the Von Shipmans come into compliance or cease operations at this location.

Applicable County Code

40.260.110 Kennels

- A. Applicability. This section applies to private and commercial kennel facilities as defined in Section 40.100.070. Animal boarding facilities and animal day use facilities are regulated under Section 40.260.040.
- B. General Standards and Provisions.
 - 1. Private and Commercial Kennels in the Rural Area. The following standards and provisions shall apply to both private kennels and commercial kennels in the rural area:

- a. In the rural area, structures housing dogs shall be set back a minimum of fifty (50) feet to all property lines.
- (1) If the structure is sufficiently enclosed at all times to mitigate noise impacts to abutting properties, no landscaping buffer is required outside the structure.
 - (2) If the structure is not sufficiently enclosed at all times to mitigate noise impacts to abutting properties, an L3 landscaped buffer is required between the structure and abutting properties; provided, that if the structure is over one hundred twenty-five (125) feet to any property line, no landscaped buffer is required.
- b. Outdoor runs and outdoor exercise areas shall be screened from abutting properties as follows:
- (1) Runs and exercise areas less than fifty (50) feet to any property line shall provide a ten (10) foot wide L4 landscaped buffer between the run or exercise area and the property line.
 - (2) Runs and exercise areas between fifty (50) feet and one hundred twenty-five (125) feet to any property line shall provide an L3 landscaped buffer between the run or exercise area and the property line.
 - (3) Landscaping may be placed immediately outside the run or exercise area, or may be placed along the perimeter of the site, provided all portions of the run or exercise area are screened from view of abutting properties.
- c. The responsible official may reduce or waive the need for the setbacks and/or screening requirements in Section 40.260.110(B)(1)(a) and/or Section 40.260.110(B)(1)(b) when circumstances such as topography, existing dense vegetation that is likely to remain, or distance from neighbors clearly makes such mitigation unnecessary.
- d. Dogs shall be kept in an enclosed structure between the hours of 10:00 p.m. and 7:00 a.m.
- e. Noise is subject to the maximum allowable environmental levels in WAC 173-60-040, as shown in Table 40.260.110-1.

Table 40.260.110-1. Allowable Noise Standards			
EDNA ¹ OF NOISE SOURCE	EDNA ¹ OF RECEIVING PROPERTY		
	Class A	Class B	Class C
CLASS A	55 dBA	57 dBA	60 dBA
CLASS B	57	60	65
CLASS C	60	65	70

¹Environmental designation for noise abatement.

- (1) Between the hours of 10:00 p.m. and 7:00 a.m., noise limits shall be reduced by ten (10) dBA for receiving property within Class A EDNAs.

(2) At any hour of the day or night the applicable noise limitations may be exceeded for any receiving property by no more than:

(a) Five (5) dBA for a total of fifteen (15) minutes in any one (1) hour period; or

(b) Ten (10) dBA for a total of five (5) minutes in any one (1) hour period; or

(c) Fifteen (15) dBA for a total of one and one-half (1.5) minutes in any one (1) hour period.

f. Kennels shall not cause external effects such as increased lighting or glare on nearby properties, or odors that are readily detectable at any point beyond the property line of the facility.

g. All kennels shall comply with the requirements in Titles 8 (Animals), 14 (Buildings and Structures), 15 (Fire Prevention) and 24 (Public Health).

2. Commercial Kennels in the Rural Area. In addition to the requirements in Section 40.260.110(B)(1), the following additional requirements apply to commercial kennels in the rural area:

a. Process. Subject to Section 40.520.020, commercial kennels shall be reviewed using a Type II process as specified in Section 40.510.020, demonstrating that the proposal complies with all development and performance criteria in this section.

b. Minimum lot size is five (5) acres, including right-of-way to the extent permitted by Section 40.200.040(C) and/or de minimus standards set forth in Section 40.520.010(G). Parcels that are less than five (5) acres may be combined if abutting and under the same ownership to meet the five (5) acre minimum requirement. Commercial kennels that have been in operation since April 15, 2011, may be approved on less than five (5) acres providing that a fully complete application is submitted by August 15, 2013. If setback requirements cannot be met, the responsible official may impose additional conditions to mitigate impacts.

c. In addition to describing the scope of the kennel operation, the narrative shall specifically address how the proposal will meet noise standards, the provision of adequate parking, and shall include a plan for dog waste disposal and runoff.

d. Parking shall meet the requirements in Section 40.340.010, except that parking areas need not be paved as required in Section 40.340.010(A)(8).

e. One (1) sign of sixteen (16) square feet or less is allowed. A separate sign permit is not needed if included with the kennel application.

f. Applications for kennels on a private road shall include evidence that safety and maintenance impacts are adequately mitigated. Impacts to be addressed shall include, but are not limited to: dust, noise, trip generation, and road safety and maintenance. Evidence of mitigation of impacts on the private road may be through a neighbors agreement provided at the time of application. For purposes of the agreement, "neighbors" shall include all who are entitled to use the private road.

- g. Applications for commercial kennels shall include all items in Table 40.510.050-1, lines 1 through 9.a and, in addition, a scaled site plan showing the name and width of any road frontage, dimensioned property lines, the location of buildings, dog runs, outdoor exercise areas, driveways, parking areas, landscaping, distances to the closest off-site residences and environmental features including watercourses, wetlands, and geohazard areas. Additional information may be required on a site-specific basis to determine whether the application meets or can meet the code requirements.
 - h. For commercial kennels on noncommercial properties, the owner/operator of the kennel shall reside on the property on which the kennel is operated.
3. Commercial Kennels in the Urban Area. The following standards and provisions shall apply to commercial kennels in the C-3, GC, IL, IH and BP zoning districts:
- a. Setbacks for structures and allowed outdoor runs and exercise areas for commercial kennels requiring a conditional use permit are determined by the conditional use criteria in Section 40.520.030(G)(2). Setbacks for indoor commercial kennel facilities not subject to conditional use requirements are determined by the applicable landscaping buffers in Section 40.320.010.
 - b. Outdoor dog runs and exercise areas are prohibited within one hundred twenty-five (125) feet of residential zoning districts.
 - c. Noise is subject to the maximum allowable environmental levels in WAC 173-60-040. See Table 40.260.110-1.
 - d. Kennels shall not cause external effects such as increased lighting or glare on nearby properties, or odors that are readily detectable at any point beyond the property line of the facility.
 - e. Site plan review subject to Section 40.520.040 is required.
 - f. In addition to describing the scope of the kennel operation, the narrative shall specifically address how the proposal will meet noise standards, the provision of adequate parking, and shall include a plan for dog waste disposal and runoff.
 - g. Dogs shall be kept in an enclosed structure between the hours of 10:00 p.m. and 7:00 a.m.

(Added: Ord. 2012-02-03; Amended: Ord. 2012-12-14; Ord. 2013-11-14)