

FILED IN EAST LYME
July 22, 2008 AT 10:00 M^a

**EAST LYME ZONING COMMISSION
PUBLIC HEARING I
Thursday, JULY 10th, 2008
MINUTES**

L. A. Blais, arc
EAST LYME TOWN CLERK

The East Lyme Zoning Commission held a Public Hearing on the Application of Francis and Robert Mattison for a Special Permit under Section 3.2.3 to operate a dog kennel at property identified in the Application as 98 Grassy Hill Road, East Lyme, CT on Thursday, July 10, 2008 at the East Lyme Middle School, Society Road, Niantic, CT. Chairman Nickerson opened the continued Public Hearing and called it to order at 7:40 PM.

PRESENT: Mark Nickerson, Chairman, Rosanna Carabelas, Secretary, Marc Salerno, Steve Carpenteri, Norm Peck, Ed Gada

ALSO PRESENT: Donald Gerwick, PE, LS, Representing the Applicant
Robert & Frances Mattison, Applicants
William Dwyer, Alternate
Bob Bulmer, Alternate
William Mulholland, Zoning Official
Rose Ann Hardy, Ex-Officio, Board of Selectmen

ABSENT: Gregory Massad, Alternate

PANEL: Mark Nickerson, Chairman, Rosanna Carabelas, Secretary,
Marc Salerno, Steve Carpenteri, Norm Peck, Ed Gada

Pledge of Allegiance

The Pledge was observed.

Public Hearing I

- 1. Application of Francis and Robert Mattison for a Special Permit under Section 3.2.3 to operate a dog kennel at property identified in the Application as 98 Grassy Hill Road, East Lyme, CT.**

Chairman Nickerson called this continued Public Hearing to order at 7:40 PM.

Ms. Carabelas noted for the record that while she was not present at the previous Public Hearing on this application that she has updated herself with all of the records of it at the Town Hall and is up to speed.

Mr. Nickerson called upon the Applicant's representative.

Donald Gerwick, LS, PE, place of business 1020 Hartford Turnpike, Waterford, CT noted that they have made some changes and that they have some additional information in response to items that were raised by the public during last hearing. He noted that there were two to three principal issues:

- Noise and how it would affect property values
- Sanitary issues and
- The driveway location.

He said that with regard to the driveway location that he would have advised the Mattisons' to have changed their driveway location from what they have now anyway as their existing driveway has poor site lines. He submitted Exhibit 9 for the record – the Inland-Wetlands permit and the driveway permit #0802.

Mr. Gerwick also submitted a letter on sanitation from George Calkins dated 7/10/08 citing the wash down and method of waste cleaning. This was entered into the record as Exhibit 10. Exhibit 11 - the Sanitary Management Plan for Great Oaks Kennel was also submitted for the record. Exhibit 12, submitted is sheet 2 of 4 of the plans, revised to 7/10/08 showing that they moved a well to reflect a change and also identifies a temporary stock pile area and the hard vinyl fence change from the stockade fencing. Exhibit 13, submitted

is sheet 3 of 4 of the plans revised to 7/10/08 showing the well moved from the westerly to the easterly area for separation differences. This also shows the troughs and the runs. They have also upsized to a 1250 gallon tank. They also have changed to a hard vinyl fence which is easy to maintain. Wash downs will be done with sanitary materials suitable for such activity and waste will be bagged and disposed of in the trash receptacles. Should this be found unsuitable, a private hauler would be engaged.

Regarding the noise and property values, Mr. Gerwick recalled that Frank Buckley, an appraiser had offered his opinion stating that it would be hard to get anyone to look at the properties in this area much less to buy any of them with the kennel there. He said that he had appraised kennels and property however he did not submit any evidence or facts to support it. These statements are flawed in two ways – the first – if you look at Skyline Drive in Salem; you will find a dog kennel there. The homes on the southern end of the street are valued in the \$216,000 range and those in the northern end of the street in the \$187,000 range. He said that he is familiar with the dog kennel as he has had occasion to visit it. There have also been six (6) property transactions since 2000 in the southern end of the street where the dog kennel is located. He submitted this information which was entered into the record as Exhibit 14. Second; the whole assumption that Mr. Buckley based his opinion on is that there is going to be awful noise there. So, he retained the services of Ben Brooks and submitted his resume for the record which was entered as Exhibit 15. He also submitted Mr. Brooks report on noise dated 7/10/08 entitled Great Oaks Engineering Study; which was entered as Exhibit 16. This study/report is an acoustical engineering study stating that the decibels at 45 is well below the 55 decibels that is allowable during the daytime and that the dogs will have little or no impact on the surrounding neighborhood. It was recommended that acoustical material be used and that the chain link fence be changed to a hard vinyl one to interrupt sound. It was also noted that the architect, Rusty Sergeant has indicated that is consistent with standards. A behavior management program will also be instituted and barking dogs will not be allowed to stay outside. He said that he would submit to them that there is a huge difference between how a family operates a business and lives where the business is versus another type of business concern where the owners are not on the premises. Mr. Brooks conducted his study under the worst case scenarios with 30 dogs all outside at the same time and all barking and found that the barriers will knock down the sound level to 15 decibels. He submitted Exhibit 17 for the record – a letter dated 7/10/08 from Russell Sergeant of Mystic, CT, the architect; noting that he has reviewed the acoustics report of Mr. Brooks and finds the recommendations sound.

Mr. Salerno asked about the study and how it was done.

Mr. Gerwick said that it was done on an existing kennel and that the distances with respect to how far houses are from this kennel were given to him from this project.

Mr. Salerno asked if they took into consideration the topography.

Mr. Gerwick said that the homes are lower and that they gave the general topography. The trees are not really found to be valuable as sound barriers as they generally lose their leaves and as such, he did not include any in his analysis.

Mr. Salerno noted that the trees will scatter some of the noise and that it will be absorbed.

Ms. Carabelas asked how high the fence is and how high is enough.

Mr. Gerwick said that the best answer is that it will lower the levels.

Mr. Salerno asked where the analysis was done.

Mr. Gerwick said that he believes a 10' distance from the runs.

Mr. Salerno asked if the neighbors are uphill or downhill.

Mr. Gerwick said that the people to the east are lower and those to the west are higher. Those to the north are slightly higher but the building will be between them.

Mr. Carpenteri asked how far the kennel is from the homes.

Mr. Berwick said that it is 250' – 300' to the nearest neighbor.

Mr. Carpenteri said that the report says 188'.

Mr. Gerwick said that those are measurements from property lines.

Mr. Carpenteri asked if the building could be moved further back.

Mr. Gerwick said that it is already 500' from the road and that to move it further back would not be practical. He added that the regulations state that it needs to be 100' from the property line and they are at least 150' from a property line and even more.

Mr. Gerwick said that if this is permitted that obviously all of the things that were mentioned would be conditions of the permit. He added that there is also the Department of Agriculture and a national organization that is voluntary and the Mattisons' have indicated that they will belong to it and this organization performs inspections so there are several levels at work here beyond those of staff.

Frances Mattison, applicant said that Officer Curry who is with the Department of Agriculture has been working with her on this and that the State has stipulations that have to be followed. They have regular inspections. She submitted Exhibit 18 for the record – the Department of Agriculture Rules and Regulations. She also submitted Exhibit 19 – the Code of Ethics from the American Boarding Kennel Association.

Mr. Gerwick submitted Exhibit 20 – copies of the Vision Appraisal cards from Salem for the properties that he had mentioned on Skyline Drive near the kennel there. He then urged them to review Mr. Brooks study and resume and read a quote from a judge who found Mr. Brooks' information more credible and persuasive in a case regarding statistical data on sound.

Ms. Carabelas asked how long the dogs would stay and what the traffic flow would be like.

Mr. Gerwick said that some would stay for a day or two and some for a week or so while their owners were on vacation.

Ms. Carabelas asked if there were hours of operation.

Mr. Gerwick said yes and added that it was contained in the statement of use.

Ms. Carabelas asked if the neighbors would have a number to call in case of problems.

Mr. Gerwick and Mr. Mattison said that they live on the property so they are there if something happens.

Mr. Gerwick noted that he would also have Mr. Brooks submit information on the fence based on the building code.

Mr. Nickerson explained that they would hear from the public and first called for those who wished to speak in favor of the application –

Carter James, Stonington said that he also owns property in Old Black Point and thinks that the Mattisons' have made a lot of effort to do the right thing and that things have been said here that have been very insulting and they have been more than willing to do what needs to be done and are providing a valuable resource. They have hired an acoustic specialist/engineer and there are ways to attenuate noise. He also urged that those who wish to speak against this please not repeat themselves as it is stressful to everyone here and to the Board to keep hearing it over and over again. He then thanked the Board for their dedication to the Town and said that this is what the country is all about and that the Mattisons' are looking to do something good for the animals and the people.

John Wilkinson, 3 Paddock Road said that he has two (2) dogs, three (3) cats and kids and that vacations have been altered due to neighbors who cannot watch their animals and so they have had to return earlier than originally planned. He said that this is a welcome business to him and that he hopes that it opens soon so that he can actually go on and enjoy a full vacation as planned and know that his animals are being cared for.

Nancy Foster, 6 Hemingway Road said that she is so looking forward to this kennel so that she can put her dogs here rather than having to drive to Norwich. She added that she would rather see her tax dollars spent here than in other Towns.

Frances Mattison, applicant said that regarding the previous special permit that they had for animals in Old Black Point that there was not one complaint on that permit. She said that she would also like them to know

that her children are fourth and fifth generation in this Town and that her family has been here since the early 1900's and that they have not just 'flown' into Town. She said that she is a Wildlife rehabilitator for the State of Connecticut. She noted that they have sat here and listened to what people had to say and have not lost their cool and asked that they please do the same.

Alicia Gear, 86 Grassy Hill Road said that her property abuts the Mattison's and that saying that they keep the neighbors happy is a lie as she has had the police out there twice. She said that she has horses and a riding ring that is near the property line that borders their property and Mr. Mattison was out there mowing his lawn and starting and stopping the mower and the horse that she was on acted up from the noise. The trainer said something to him and he just smiled and waved. These horses are 16.3 hands high and not ponies. She said that she continued riding and that he then started in with firecrackers and they called the police who came out and she filed a report against him. She said that the next day while she was riding that he used a chainsaw on the property line and this again scared the horse and she again called the police and that since then, it has been quiet. She said that she is not young and that she is frightened as she lost her husband in September and that there is a law on the books about no excessive noise so they should protect her from this and from him bullying a single woman.

Mark Butterfield, 6 Upper Walnut Hill Road said that there are three factors here that they have to consider – first if this is in harmony with the neighborhood and that should be determined by the neighbors; second, the property values and he said that he thinks that the appraiser should be the standard and not the useless information that they got tonight – and they should throw that information out and third and last – the noise – there should be no additional noise generated. He said that his dirt bike generates 90 decibels (in reference to noise) and that this is a special permit. Also, none of the people who spoke in favor of this application live in the neighborhood and that should be considered.

Maureen Bell, 18 Upper Walnut Hill Road said that the sound report was done without seeing the site. They also heard about some 30 dogs and there are going to be an additional 20 dogs. Also, noise is relative, as she lived in Mystic with the highway noise and a kennel there probably would not have bothered her due to the highway noise. And, if they granted a permit with the condition about no barking dogs being outside – would this mean that the Zoning Commission would issue a Cease & Desist when they barked.

Pat Butterfield, 6 Upper Walnut Hill Road said that she would be petrified to be on her horse to know that someone would willingly do such things as her neighbor Ms. Gear related. She said that the applicant's dog still roams around the neighborhood and that past behavior is indicative of the future. She added that she hears the noise from the Waterford Speed bowl at times and the train.

Joe Cerasole, 123 Grassy Hill Road said that if they add a noise wall that he knows people who do studies on sound walls and that there are several sound walls in the State of Connecticut but they do not block out noise – they need to have a soundproof room. He said that noise travels everywhere and that the walls do not work but they are built to appease the property owners.

Mike Maher, 104 Grassy Hill Road said that he is the abutting property owner and that he will amplify what Mr. Butterfield has already said. This should be in harmony with the neighbors and it is not. He said that Frank Buckley's testimony is certainly more valuable than the appraisals that were presented this evening. He lives behind the Mattisons and he hears their dog now. Also, their property deed has a covenant that states that for eight (8) years, they are to refrain from doing anything inconsistent with farming and he does not see a kennel as applicable to farming. He submitted a copy of the deed which was entered into the record as Exhibit 21.

Dwayne Matthewson, 90 Grassy Hill Road said that there are new plans on the building and asked where they are and where the lights will be shining and what the hours of operation would be. He submitted Exhibit 22 – a note from his doctor, Elizabeth Caricke of Sound Medical Associates of Old Lyme stating that the noise from the kennel would upset him. He said that he does not want the extra cars on the road that would be created by this with his kid riding a bike in the street. He submitted Exhibit 23 – an aerial photo of the properties for a view of the layout of his property in relation to the proposed kennel.

Mr. Nickerson noted that Mr. Matthewson could review the plans in detail after the meeting or in the Zoning office at his convenience and view any lighting.

Peggy Ann York, 92 Grassy Hill Road said that the Mattisons' have goats and ducks and that the dogs will bark when they hear the horses and other noises. The new driveway will be bothersome to her as she likes to enjoy her yard. She said that what she heard from Ms. Gear was appalling regarding the firecrackers and harassment. She submitted her statement which was entered as Exhibit 24.

Barbara Johnston, 35 Sea Crest Ave. said that she is from Black Point and that a few years ago when this came up with the other permit that was mentioned, that Ms. Mattison only won because she was not part of Black Point as Black Point has their own zoning and would not have allowed her to have animals.

Attorney Paul Geraghty, representing Mr. Maher said that he would like to address some items. He asked if the architectural plans are new.

Mr. Mulholland said no.

Mr. Geraghty said that the architectural plans have to have specific information on them and that there are no HVAC plans submitted here or lighting or sound barriers and that they have to have this and that it cannot be left to staff review as the public has a right to review it. If they do not have it for review it would fail on appeal. He said that the deed shows that the prior owners meant for this to be farmland for eight years and that a kennel does not apply here and that while the regulations do not differentiate between kennels that he has a letter for the record on Dog Law in CT (undated). This was entered as Exhibit 25. He continued that they need building details depicting colors, windows and that they do not have these to see if they are in harmony with the area. Mr. Buckley is licensed and his appraisal is evidence and all else is not to be considered here so he submitted that they have to deny this as it is detrimental. He said that he knows that Ledge Light signed off on the disposal of waste but they need a chemicals list and how those chemicals will be stored as they are industrial grade chemicals and toxic. He submitted some minutes on a kennel from Michigan dated 7/5/1999 that he had 'googled' from the internet. This was entered as Exhibit 26. He continued that a State of Connecticut review does not mean that they should give any ground as they do not care about the people here and enforcement comes right from the start. He asked that they deny this application as it does not satisfy the special permit.

Mr. Nickerson asked if there was any other public comment --

Stewart Mattison, 57 Hillcrest Road said that his parents have come to them with all the requirements on distance, sanitation etc. that allows them the freedom to utilize their property and that no one has a crystal ball here and no one can see or know what might happen on either side.

Carter James, 1416 Main Street, Stonington, CT said that with reference to anyone who wants to address someone as a 'liar' in a public forum -- that is not correct and they should ask their attorney. With respect to property values, he said that to hold one person's testimony as a god is just ridiculous, especially when they have heard a differing opinion supported by appraisals in a real situation with a kennel in Salem. If people feel that their health is going to be so adversely affected with this application then they should first go see a doctor and get their health to where it should be so that they will feel better rather than to blame the Mattisons for what ails them. It is premature to have technical data at this point and expensive. The chemicals themselves have a listing on them (by law) stating what they are. And, before they attack him, he said that he would like to state for the record that he has a degree in Environmental Science and a PhD in Behavioral Science so he has knowledge with what he is saying. He said that to think that all people hear is the birds and the bees and to think that nothing will change is ridiculous. Things change all the time and people want to have a life. People have kids and even kids make noise.

Laurie Maher, 104 Grassy Hill Road said (laughing) that was all too funny to her and that she wants the Commission to come to her house for iced tea on Monday or Tuesday to see what she is talking about. She said to be a good neighbor they would have to come to the neighbors first and they would have told them that this is no good and would have told them to have a Christmas tree farm or something. She asked how many employees they would have -- 30 or 100 -- would they have two for every dog.

Andy Radynski, 15 & 17 Upper Walnut Hill Road said that he can hear the dogs from the Salem kennels at his house at times and it is a mile from that kennel.

Robert Mattison, 98 Grassy Hill Road said that his neighbors have been speaking about harmony and that prior to this everyone got along and now his dog bothers them and everything else. He said that he offered to put up a fence on his property so that his dog would not go into their yards and that they said 'no – they like the dog' – and now they don't. As for the horses, it seems that Ms. Gear rode her horses on our property before we owned it and when we told her that due to the liability that she could no longer ride on it, things changed. Yes, we do mow the lawn on the line on our side of the fence and yes, we cut the wood to burn. With respect to the police, they never said anything about criminal charges. He said that they want to work with the neighbors and that they do not like barking dogs either however – it seems that before this, it was okay. He said that they have tried to address every issue on this.

Mr. Nickerson asked if the Commission had any questions.

Mr. Peck asked Mr. Gerwick about the new location of the driveway.

Mr. Gerwick said that the driveway is the same as what they have proposed and that is what he has advised them to do anyway as the current driveway is in a poor location.

Mr. Peck asked about a lighting plan.

Mr. Gerwick said that there would not be any lighting other than for a few lights on the outside and that as there is no real lighting per se – that they would be of the type and quantity of residential lighting which does not require a lighting plan.

Mr. Peck said that he had a question, for the record, for Ms. Gear regarding horses. He asked Ms. Gear for her comments on how horses might get accustomed to certain sounds and if they would.

Ms. Gear said that they are herd animals that do get accustomed to certain noises however dogs are pack animals and pack animals cause them to think that they might be hunted. If they cannot see or hear something, they might be frightened. She said that she does not think that they would get used to the dogs noise from this and added that she has expensive show animals and they need to rest and if they cannot sleep or rest then this is not a good situation.

Mr. Peck asked Mr. Gerwick about the deed and if anything other than farming was mentioned and if it was from 2005.

Mr. Gerwick said that he believes that the term is agricultural use and believes that this is registered by the Department of Agriculture as a use. He added that he does not think that Mr. Geraghty could know the intent of the previous owners and further that it would be a civil matter and not a Zoning issue.

Frances Mattison, 98 Grassy Hill Road, applicant said that it is required that any riding stable have a special permit and that there are many stables and other enterprises running businesses on the streets where she lives who are operating without permits. Here, they are trying to do this right.

Mr. Peck said that he totally agrees with her that this is a non-zoning issue and may be a moot point.

Mr. Salerno said that he took a drive up there and asked about the driveway location.

Mr. Gerwick said that when he recommends an area that he looks at the site lines and the issue of liability and the wetlands. The proposed location offers safe site lines in both directions and does not impact the wetlands. The site line to the west is 350' and to the east it is 425' and this is measured 10' back from the pavement.

Ms. Carabelas asked if the heating and AC was submitted.

Mr. Gerwick said that Rusty Sergeant, the architect has indicated that it will be ground-mounted and that it will comply with State specifications. The location is to the rear right side or back of the building in the fenced in area.

Mr. Mulholland noted that it has to be out of sight and that he has testified that it would be ground mounted and fenced in.

Mr. Salerno asked what the septic was designed for.

Mr. Gerwick said that the State of Connecticut has specifications for dog kennels and that for 30 runs they are providing a 1250 gallon tank, which is larger than needed.

Mr. Nickerson said that while they did not have it marked as testimony that they would not enter the appraisal of Mr. Buckley into the record as **Exhibit 27**.

Mr. Gerwick said that he believes that the acoustical report of Mr. Brooks speaks for itself.

Mr. Gada asked if any run-off from the driveway would go to other properties.
Mr. Gerwick said no.

Mr. Nickerson called for a motion to close this Public Hearing.

****MOTION (1)**

Mr. Salerno moved that this Public Hearing be closed.

Ms. Carabelas seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Mr. Nickerson closed this Public Hearing at 10:10 PM.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary