

June 12 20 08 at 10 AM PM

**EAST LYME ZONING COMMISSION
PUBLIC HEARING II
Thursday, JUNE 5th, 2008
MINUTES**

Esther B. Williams

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, June 5, 2008 at the East Lyme Town Hall, 108 Pennsylvania Avenue, Niantic, CT. Chairman Nickerson opened the Public Hearing and called it to order at 8:35 PM after the previously scheduled public hearing.

PRESENT: Mark Nickerson, Chairman, Marc Salerno, Acting Secretary, Steve Carpenteri, Norm Peck, Ed Gada, Gregory Massad, Alternate

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

ABSENT: Rosanna Carabelas, Secretary

PANEL: Mark Nickerson, Chairman, Marc Salerno, Acting Secretary,
Steve Carpenteri, Norm Peck, Ed Gada, Gregory Massad,
Alternate

Pledge of Allegiance

The Pledge was previously 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 noted that the Legal Ad for this application had run in The Day on 5/23/08 and 6/2/08. He then asked Marc Salerno, Acting Secretary to read the correspondence into the record.

Acting Secretary Salerno read the following correspondence into the record:

- ◆ Letter dated 6/5/08 to EL Zoning Commission from William Mulholland, Zoning Official – Re: Mattison/Special Permit/Kennel – noting that the subject property is RU-80 and that the subject property consists of approximately 40 acres. The proposed use is permitted by Special Permit under Section 3.2.3 of the zoning code – which also permits “veterinary hospitals, riding or boarding stables.” Section 25 states that “all such uses are hereby declared to possess such unique and special characteristics that the specific use shall be considered as an individual case.” Section 25.5 requires a kennel to be on not less than three (3) acres and that no animals shall be kept in any building less than 100 feet from any lot line. Section 24 addresses specific site plan standards such as driveway surfaces, widths, sidewalks, landscaping and storage areas. Section 22 addresses parking and the Commission will need to determine an appropriate number of off-street parking spaces. Further, the application has been reviewed for conformance with all the applicable zoning regulations and has been found to be generally compliant with the following exceptions – Sidewalks and Front Landscaping.

Mr. Nickerson called upon the applicant or their representative for a presentation of this application.

Donald Gerwick, PE, LS, place of business 1020 Hartford Turnpike, Waterford, CT, submitted Exhibit 1 – a photo of the posted notice of Public Hearing stating that it was posted 5/19/08. He said that the proposed kennel is for dogs and cats and would be located on a 33 acre parcel of land at 98 Grassy Hill Road. The use is allowed under a Special Permit and falls under the veterinary, riding and boarding stables area which states: that it cannot be on less than three (3) acres. This is a 33 acre parcel and the kennel facilities will be located on the seven (7) acres which are highlighted on the plan. And – the proposed building cannot be less than 100' from the property line and this building is in excess of 150' as are all of the accessory buildings in the area. They are asking for a waiver of the sidewalks as this is a rural area and there is little pedestrian traffic and having a sidewalk here would be a sidewalk to nowhere. They are also asking for a waiver of the landscaping buffers to the front as there is plenty of vegetation there that acts as a buffer. Also, to the right of the driveway they would seek a waiver as they intend to install a solid fence in lieu of the vegetation (on the westerly property line) for a length of 400'. On the others natural vegetation exists. He submitted Exhibit 2 – a letter dated 6/5/08 on the requested waivers that he had just discussed.

Mr. Gerwick said that there is an existing driveway on Grassy Hill that is close to the inland wetland and that has a bad site lines so for the purposes of increasing the site line and to bring it away from the wetlands, they will move it. He submitted Exhibit 3 – a letter dated 1/28/08 to the Mattison's from the Inland Wetlands\Conservation Commission regarding the granting of a wetlands permit to them.

The proposal is for a kennel for dogs and cats – there would be 30 containment areas for dogs and a small 'cattery' area separate from that to board cats – perhaps 18-24. While this is not a breeding facility they are required to have a breeding and puppy area. They also plan on having a doggie daycare. While he has heard rumors of this being a subdivision – it clearly is not – the boundaries are certified and the survey has been done for the area of seven acres. They are 500' from the road; 188' from the northern property (and also a fence will be here) and their home is 400' away. There is plenty of vegetation and they will add the 6' high fence and with this area being 6' below grade – that provides a low enough area so that no car lights would be visible. They are 183' from the property lines to the east and south. The nearest building/house is to the east and that is some 250' away. To the south of this property there is a commercial riding/boarding operation and school.

They would be served by their own well and fully compliant with the State Dept. of Health standards for an on-site approved septic system. They have also spoken with George Calkins of the Ledge Light Health District on the system. The proposed driveway would be stone and they propose 15 parking spaces which are probably excessive however there is no standard. One is handicap; 11 are paved and there are 4 for the overflow that would not be paved. The lighting would be wall packs on the buildings. The hours of operation would be 7 AM to 7 PM with a very short pick-up time during the evening hours in the winter time. He said that he has spoken with Mr. Hayden in Conservation and that they wanted to see the sheet flow and the last parking spaces left as gravel to allow for the natural infiltration over the ground. The grading on the driveway does not flow to the Town road.

He presented Exhibit 4 – the statement of sanitary use for the record. He said that this would be a state of the art kennel with 30 kennel runs and sound dampening panels for the inside and the outside. The runs would be cleaned two times daily on the inside and outside with environmentally friendly products. The revised plans show the chain link fence around the run areas for the dogs and another noise reduction and privacy fence around that. There will also be trees. The felines will be in a separate area and all pets will have to have proof of inoculations etc. No aggressive animals will be accepted and all dogs will be locked up by 7 PM and will not be allowed out prior to 7 AM. The normal days of operation are Monday thru Friday. They will have fire and security alarms and three (3) people working on-site. This facility is owner occupied and the owners can easily get to the facility. The State Department of Agriculture will inspect the facility and they have a representative assigned to them.

He said that he has been working with the Mattison's for about a year on this project and that they have worked on a subdivision also but they would prefer to do this. They own these 33 acres plus another 47 acres to the rear for about 80 acres total. This is a low-density way to keep this as a farm and he said that he has been impressed with their due diligence. They engaged a good architect, Rusty Sargeant who designed a building that looks like a barn.

Mr. Gerwick said that he discussed with George Calkins, Sanitarian the disposal of the dog and cat feces and that the wash-downs will go into the septic and the solids into the Town approved trash receptacles. The trash receptacles will go down to the street on the day of the pick-up and if they for some reason are not accepted, arrangements will be made for the private pick-up or for additional septic tank disposal. This is consistent with the discussion of Mr. Calkins from the Ledge Light Health District. He submitted Exhibit 5 for

the record – literature on the animal enclosures – noting that Page 3 shows the solid barriers. He said that the vinyl stockade fence would be 6' in height.

Mr. Gerwick said that for the record he would like to submit some aerial photographs of the property and the house – Exhibit 6 – shows an aerial photo of the horse farm and the proximity of everything. Exhibit 7 – shows a close up of the house looking east with the evergreens and the trees and Exhibit 8 – is an aerial view looking north of the riding and boarding stable.

Mr. Gerwick said that he would answer any questions that they might have and would like to reserve the right to rebut after public comments.

Mr. Nickerson asked how far the kennel is from the owner's house.

Mr. Gerwick said that it is approximately 400'.

Mr. Carpenteri asked if it was just being designated as a kennel.

Mr. Gerwick said that the regulations do not have any other designation – however the driveway is being re-routed to serve both the house areas. He said that he has heard that the animals will get out and run loose however they have to go through four (4) doors to get out of the front and with the outside they would have to go through three (3) fences.

Mr. Carpenteri asked how many dogs would be in the doggie daycare.

Mr. Gerwick said that is controlled by the State and that they have two (2) doggie daycare areas with each being 225 sf because it is a situation where the dogs are loose and a person has to be there to watch them and the State controls the number with 10 to 12 being the maximum. So, they could probably have 20 dogs per day which would be 40 trips in and out with passenger vehicles which is not a heavy traffic load. He noted the site line which is in excess of 400' to the east and over 300' to the west and that they both exceed the site line requirements.

Mr. Peck asked what surrounds the seven acres – trees, buffers, etc.

Mr. Gerwick said that the drive is 24' wide and explained the heavy vegetation.

Mr. Peck asked if there were other plans for adding trees.

Mr. Gerwick said that they are asking that the natural vegetation will be allowed; however they would add buffering if requested but he asked that they consider the heavy deer population up there as they tend to eat many of the plantings that they might request.

Mr. Massad said that he was concerned with the house in relation to the kennel.

Mr. Gerwick showed enlargements of the Assessor's map and said that there is nothing in the regulations that says that this has to be occupied 24 hours per day and they are close and the buildings will be alarmed with sound and video.

Mr. Massad asked if there would be any signage.

Mr. Gerwick said that would fall under a separate application and that any sign would generally be made of wood to fit with the area.

Mr. Massad asked why it would be placed where it is with the amount of land involved.

Mr. Gerwick said that they have wetland bands that start to expand and this is a short-term boarding and daycare facility that is already 500' from the road. This area is already cleared from past use and it meets the Special Permit use and is not so far that people won't wonder if they are in the wrong place when they drive up the driveway. This area balances the needs of the resources on the property.

Mr. Massad asked if even with the wetlands – couldn't it be moved further back.

Mr. Gerwick said that they meet the regulations and if 400' is not far enough – would 600'? The regulations only require that they are 100' away and this is 500' away. They have to balance and they feel that this has a good balance of protecting the neighbors and suiting the purpose.

Mr. Nickerson said that he would now take comments from the public and explained the protocol – He then called for anyone from the public who wished to speak in favor of this application –

Martina Dinali, 38 Sea Spray Ave. said that she feel that the presentation was very intelligent and that they have done their due diligence here. She said that she has three (3) dogs and would appreciate not having to haul them to Groton. She likes that they have a concern for the wetlands and supports this wholeheartedly.

Carter James of Stonington said that he owned property in Black Point and has family in Old Black Point and knows this property well. He said that he is a Regional Planner in Vermont and a Town Planner and that when he sees a project like this he is likely to address the issue that was brought up about placing this further back on the property as it would not make sense to do that. In bad weather they have to maintain the road and it does not make sense to move further back. Plus – they have stables and farmland right near them and this project makes perfect sense and there is a need for a kennel here. He said that he is totally in favor of this and feels that they should give it due diligence. The Mattison's are hard working people and he would just as soon not see this becoming a subdivision opportunity.

Bob Hudyma, 41 Grassy Hill Road said that he is basically familiar with this property as since 1955 he knew the farmers that divided this land. In the 1970's the State stocked coyotes here to control the deer – so now they have 60-80 lb. dogs running thru Nehantic State Forest. A lot of people have dogs that run loose here but the State lets the coyotes remain in the neighborhood and you can always hear them yodeling in packs. He said that they also have mountain lions, black bear and bobcats. He told them not to get the illusion that this neighborhood is quiet as there is always noise and during the summer they will hear the Waterford Speed bowl roaring away. And – some of these neighbors go to the gun club and shoot thousands of rounds – so we get to hear that also. There are a lot of loose dogs running around yelping in packs and they also have a ton of people who own horses and ride on the road. So – he said that he does not understand why so many people are against this. Dog is man's best friend and he said that he has seen people thrown from horses and bikers who go through the forest and yet, these people did some unbelievable work and the horse people should be envious. He said that he does not see how these people can come here and be denied this when there are huge horse manure piles all around – he asked when the hypocrisy ends.

Mr. Gerwick said that he has a letter to read into the record and to submit for the record from Sandra Taylor of 74 Grassy Hill Road who is a 30 year resident. Ms. Taylor said that she had to note the petition that started to circulate around the neighborhood and that she had signed it before she found that the Mattison's are fully within the regulations. She said that she lives between people with dogs, cattle, roosters, sheep and goats and that the concern about the dogs escaping is ludicrous – it is like not building a bridge because there might be an earthquake. She said that she has had all sorts of loose farm animals on her property; to the extent of finding goats and sheep under her windows and that she feels that this is part of living in the country.

John Wilkinson, 3 Paddock Road said that he is a retired attorney and that his family has many pets and he regrets that they have had to come home from vacation early because a neighbor who is watching their pets cannot take care of them. He said that he would be their first customer once they open. He said that he also certainly would not want to intrude on their home on his way to their business so it should not be necessary for them to have their home right next to it. Also, this is in the middle of the woods and no one has said this – but when you see the sign for 98 Grassy Hill – you still have a long way to go to get to where this kennel would be. He said that he drove this driveway and before he saw the house he thought that perhaps he had the wrong place and that would not be something that you would want people to think when they are trying to find you. He suggested that the Commissioners go take a look at this property as to request that it be moved further back would not be wise.

Bob Gadbois, 358 Boston Post Road said that he is very proud of these people in trying to save the land. While he does not live up there, he said that he has dogs and he is proud that they are not subdividing and selling the land for more houses as this is farmland and it is up in the woods. They have to stop developers from eating up the land.

Mr. Nickerson called for anyone from the public who wished to speak in opposition to this application – He asked that they raise their hands and wait to be recognized as he would call upon them by rows –

Ron Furr, 110 Grassy Hill Road pointed out where he lives on the plan and said that with some 50 to 60 dogs barking and the open fields that this is in his back yard and he doesn't like it and threatening them with development is just not so as there are wetlands there. He said that he thinks that this is wrong and he is opposed to it and does not want it in his back yard.

Patricia Butterfield, 6 Upper Walnut Hill Road asked if obedience training would be done and said that she has lived here for 40+ years and that she has had the Mattison's animals in her yard already such as the goats and ducks and that is it not okay. She said that she doesn't think that people in other areas of the Town would like this either. This is farmland and dogs are not farm animals – they are domesticated and are not farm animals. She said that she does not find this in harmony with the area and while she hears threats of housing developments – if that is so – then they would see all of them back here again as they have challenged development before and they can do it again.

Mark Butterfield, 6 Upper Walnut Hill Road said that their engineer has said that it meets the regulations and the Special Permit is supposed to be in harmony with the area. Well, it is the people who live in the area who are the people who best decide what is in harmony with the area.

Mike Maher, 104 Grassy Hill Road said that he is an abutter to this property and a 25-year resident. He passed out some information to the Commissioners and asked that this application be denied. He said that he bought in 1983 and that he likes Grassy Hill as it is a nice quiet area and the construction of a commercial dog kennel would destroy their way of life and not be in harmony with their area. He said that he asked appraiser Buckley who has stated that a dog kennel would have an adverse effect on his property at 104 Grassy Hill Road and that it would also have the effect of noise and more traffic. Mr. Buckley claims that with barking dogs that it would be impossible to get anyone to look at his house if he wanted to sell it. Dogs make noise and they all bark at the same time. He presented a petition of signatures that every neighbor had signed and asked who would want to live near a dog kennel. He told the Commission not to approve this Special Permit for a dog kennel. He said that Mr. Buckley is present and would speak to them and answer any questions that they might have.

Frank Buckley, 338 Main Street, Niantic said that he is a resident of the Town of Haddam and that he was brought into this due to the impact from the neighboring property use. He said that he inspected Mr. Maher's property and that he was retained for that purpose. He said that he has appraised kennels and vet hospitals in CA zones and cited where he goes to the kennel in Haddam and to one that he went to in South Glastonbury. He said that the sign itself for a kennel would be enough to keep someone away from buying a home and that it is a major turn-off – as would be the fence along the length of the property line. He urged the members to take a ride up there and park in front of Mr. Maher's property and see what he is talking about.

(Note: A brief break was taken here)

Mr. Nickerson asked that those speaking please not repeat what they have already heard – Joe Cerasole, 123 Grassy Hill Road said that when he first heard about the kennel that he was shocked as it will devastate the property values with all of the noise. He said that he knows all about noise walls and that they do not work as the noise goes up and over them. With respect to the road – Grassy Hill is the most dangerous in East Lyme and it was rebuilt the wrong way and at the time that it was done, he said that he argued with the engineering department and that they did not listen and those people are now gone. New traffic to the road won't know the curves and that they are banked the wrong way and with no shoulders, people have to drive over the catch basins which are not a good situation. He said that he has worked with this all of his life and knows that this would be a problem and that the sound walls will not work and they will hear dogs barking.

Laurie Maher, 104 Grassy Hill Road said that she is the wife of Mike Maher and that their property directly abuts the property in the application. She said that she opposes this kennel and that this is a huge issue to and with her and her neighbors and that she wants them to know that their decision will have a life altering effect on her life. She said that it seems that it is obvious commonsense that they should not allow this to be put here. She presented them with a picture for their viewing only (not to keep as an exhibit) of her backyard and stated how she enjoys nature's noise and how it would be gone with 50 barking dogs. She will never

have peace and quiet in her yard again. She asked that they not approve this unwanted kennel in her neighborhood and that they preserve her right and deny this atrocity and degradation to this neighborhood.

Peggy Ann York, 92 Grassy Hill Road said that she is a neighbor to 98 Grassy Hill Road and that she is opposed to the kennel. She said that she did go over to look at it and that she is concerned with the driveway and the noise and that even though the driveway is being moved; she can still see it. She read a letter that she had from the Norwichtown Beebe's who said that they live near a kennel and hear dogs that are barking all the time. She said that the driveway runs behind her lot and that she will hear and see the cars traveling there. The coyotes yelping stir up the neighbors' dogs and get them barking and that will stir up the kennel dogs. She said that her family sold this property to the Wheelers who sold it again.

Bobby Jo Matthewson, 90 Grassy Hill Road said that her house is between the road and the barn where the kennel would be. She said that she is concerned with the undesirable by-products of the kennel and the noise. A kennel here would open up this idea to others – and wouldn't they all want to earn a living by staying home? She said that she can see this property from hers and that she does not want the traffic or unwanted people in the area. Grassy Hill Road is not for a kennel and she asked that they do not approve it.

Dwayne Matthewson, 90 Grassy Hill Road said that he thinks his house is closer to the kennel than their property. He would not be able to keep his windows open during the summer with the dogs barking day and night. He said that he takes medication for stress now and that it has helped him greatly and that this upsets him and would set him back. He asked that they not approve this application.

Alicia Gear, 86 & 88 Grassy Hill Road said that her farm is at 88 Grassy Hill Road. She said that Fran Mattison is a lovely person and that she has a horse place adjacent to their property and that she has people who do not want to go into the ring because of Fran's dog that gets loose and spooks the horses. She said that she has asked them to take care of this many times and that it has not happened and that looking at Fran's place is like looking at a Vietnamese boot camp. She submitted a letter from her daughter who could not be present this evening to speak.

Mr. Nickerson read a letter into the record from Catherine Hear of 88 grassy Hill Road which stated that they would not be able to open their windows as there would be constant noise from the dogs barking. She said that she works nights and that she does not want a kennel here.

Ron Stazick, 104 Grassy Hill Road said that he has a friend in Taftville who has a dog kennel and that the dogs bark constantly. He also said that he has another friend who lives near one who also said that the dogs do bark constantly.

Maureen Bell, 18 Upper Walnut Hill Road said that they are talking about dogs and farming and a farm excluded dog kennels and that it clearly comes down to the issue of noise. She said that she has two (2) dogs that are very well trained and that stay in their own yard however, they bark and it is very tough to get them to stop once they start. She said that she wanted them to hear 90 seconds of tape of her two (2) dogs barking and see how they would like to hear that all the time with many more dogs. She played the tape for a shorter period of time for everyone to hear.

Tom Kalal, 80 Grassy Hill Road said that he saw on the agenda the issue of up-zoning for the northern end of Town and also cited the fact that they are looking to designate roads within the Town as scenic. Those are positive concerns. His concern here is with the noise of the barking dogs and the dog feces and what it would be like on 120° days sitting out waiting to be picked up – this would be rather stinky manure. He also said that he does not see where 8000 gallons of dog urine will go or how it will be managed. He said that all farmers in the north end of Town need manure management and that he would submit information on this. He also said that he did not see three (3) layers of fencing or accommodations for dogs that would dig under the fencing or for those that would jump over the fencing. He asked what if the kennel was sold to a national franchise. And, the trash receptacles and trash screening – how would that be handled. He said that he wants a performance bond of 100% if they are considering such a ludicrous proposal.

James Fensky, Walnut Hill Road said that he is concerned as a taxpayer and not with the noise but with the 40 more cars on the road day and night. The Town has been looking for \$400,000 to redo Walnut Hill Road and if the kennel devalues the property there then they will never have the money to fix the roads – plus they just approved a subdivision on Walnut Hill Road.

(Note: Mr. Nickerson noted for the record that the Zoning Commission did not approve the subdivision as that is a Planning Commission issue.)

Attorney Paul Geraghty said that the Maher's had retained him with respect to this matter. He said that this is a rural area and what better place for this except that this is the most densely developed area of the road. He said that he thinks that this application needs subdivision approval as the Special Permit section is where the kennel is found and it is an accessory use and not a customary use and therefore it is subordinate. A lot is defined as free-standing for one use only so it would have to be subdivided and he does not think that they can approve this. He said that this also does not prevent a subdivision from being put in. He noted that he feels that just because this meets the regulations of the Special Permit that he does not think that it means that it should get approved as he thinks that it should be held to higher values just as Judge Fuller states in his book where he states that it should be weighed 'as of rights' and that residential is the 'as of right'. He also submitted to the Commission a copy of the regulations that the Department of Agriculture has with respect to kennels.

He continued that they have heard that this would be State of the Art and have sound barriers but they do not have the specifics on them or the specifics on how things are going to be cleaned or what toxic chemicals would be used to kill bacteria and they need all of this technical information. He said that there is a lack of detail in the building – it is 30' tall at the highest and will be made of sheet metal and board and batten and the architectural requirements have not been submitted to review it. He submitted a picture of Lombardi's building as an example of what the kennel buildings might look like. He said that there are lighting requirements for kennels and fresh air and you do not know if this is how this is set up or if there is HVAC here.

The buffer strips are another matter and while there are deciduous trees, they have a 14' wide driveway that has been abandoned to make a 24' wide one and that takes away from the area. He said that it sounds great but there is nothing to demonstrate that it will be so and based on that, they have to deny this application as they do not have the evidence and documentation that is necessary. He added that the POCD cites traffic points and directs community activity to the Rte. 161 and I-95 corridors. And, Mr. Buckley has said that this impairs the property values and they have to deny this.

Mr. Gerwick said that there are a lot of issues and more emotion than actual issues that have been expressed and so to more thoroughly address the issues, he said that he would request that this be continued.

Mr. Nickerson noted that it is very late and that they still have a lot to go through this evening.

Mr. Gerwick said that for instance, Mr. Buckley put forth an opinion and that there were several mistakes with reference to the actual plan.

Mr. Nickerson called for a motion to adjourn and continue this public hearing.

****MOTION (1)**

Mr. Salemo moved that this Public Hearing be adjourned and continued to the next meeting of the Commission.

Mr. Massad seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Mr. Nickerson adjourned this Public Hearing at 11:30 PM and continued it to the next meeting of the Commission.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary