

PROCEEDINGS OF THE ST. CLOUD ZONING BOARD OF APPEALS

A meeting of the St. Cloud Zoning Board of Appeals was held on December 21, 2010, in the City Hall Council Chambers. Members present were Barkalow, Jamnick, Larson, Ohman, and Ugochukwu. Fandel was absent. Due to the absence of Chairperson Fandel, Vice-Chair Jamnick chaired the meeting.

Approval of Minutes: Ohman moved to approve the minutes of the November 16, 2010, meeting. The motion was seconded by Barkalow and carried by a vote of 4-0-1 (Jamnick abstaining as he was not present at the November meeting).

Variance Request/Jason Brix: Dave Broxmeyer, Senior Planner, explained that the applicant has installed a spa on the west side of his home which is within the front yard area. According to the Land Development Code (LDC), spas are not allowed in the front or side yard. Broxmeyer stated that the variance originated from a complaint probably from somewhere within the neighborhood. A City code enforcement officer visited the property and found the spa was in violation. The property owner then filed the variance request. Barkalow inquired if the only location where the spa or hot tub would be allowed is in the rear yard, and Broxmeyer answered that was correct. Larson asked if it would be possible to place a three season porch in that location to enclose that spa. Broxmeyer responded that would not be possible on the west side of the property; however, it could be done on the north side. Barkalow asked if the reason the applicant could not have a porch in the side yard is because of the setback. Broxmeyer answered that the spa is already within the setback, but the "deck" is considered a patio because it does not have a roof. Vice-Chair Jamnick opened the public hearing on the request from Jason Brix for approval of a variance from Article 15, Section 15.5, G., 3., which only permits spas in the side and rear yards of residentially zoned

properties. The applicant has placed a spa on the west side of his home, which is considered to be a second front yard. The applicant is seeking to keep the spa in its existing location. (3120 3rd Street North) (VAR-2010-14). The following persons testified:

Jason Brix 3120 3 rd St. No.	He stated that the LDC states that the spa can be in the rear and side yards. There is no other location on his property where the spa can be placed. He doesn't have a rear yard. His side yard is actually the back of the home. It wouldn't be practical to put the spa there because there are no doors there. The current location is the only feasible place for it to be. Adding a porch onto the north side of his home to put the spa there is not a reasonable accommodation. He would be willing to put a higher fence around the spa in its existing location.
Evan Larson	He suggested screening/landscaping around the spa.
Jason Brix	He would be willing to do anything that is reasonable.
Susanne Barkalow	She asked how long he has owned the home.
Jason Brix	The property was owned by his father who passed away in June of 2009. The property was signed over to him by the executors of his father's estate on January 14, 2010.
Joel Jamnick	He asked applicant if he got a permit for the deck addition on which the spa sits.
Jason Brix	He was told by Dave that he did not need one. A licensed contractor built the deck. The contractor advised him that he did not need a building permit. After he received the violation letter, he contacted the Building Dept., and he was told a building permit was not necessary.
Susanne Barkalow	She asked the size of the hot tub.
Jason Brix	The hot tub itself is 7'9" x 8'9". The deck that was added on is 12'x 12'.
Virginia Howard 975 Summit Ave. No. Apt. 106 Sauk Rapids, MN	She is representing some of the neighbors. Their concern is the proximity of the spa to an education facility and the view of it from the main roads. Landscaping or higher fencing would be appropriate. Safety is another issue; it would be a drowning hazard for children or anyone else that could access it. She questioned how secure the lid is as the lid blew off during a storm in the fall.
Chuks Ugochukwu	He asked if higher secure fencing and landscaping would be acceptable.
Virginia Howard	The whole premise of the LDC was to have it out of view.

Susanne Barkalow	She asked how high the fence could be without being in violation of the LDC.
Dave Broxmeyer	The maximum height in the front yard would be 4'.
Chuks Ugochukwu	He asked if landscaping could be higher than 4'.
Dave Broxmeyer	Yes, landscaping could be taller than 4' unless it is a perimeter hedge. However, it would take time for it to grow.
Jason Brix	When he received the violation letter, he assumed that safety was the concern. He was told that the only thing required to meet the safety standards is a safety cover. He has a safety cover which is a locked cover.
Susanne Barkalow	It appears there is a deck railing. She asked if it is possible to have it railed in 100%.
Jason Brix	There is about 3' that is open. There could be a locked gate to totally enclose it.
Chucks Ugochukwu	The question is not just safety but that the entire construction in that location is unacceptable. He would be more comfortable with a 4' high fence and landscaping; it would be more visually appealing with landscaping.

There being no one else wishing to speak, the public hearing was closed. Ugochukwu moved to approve the variance subject to the following conditions: 1) There be a 4' high fence with shrubbery to grow 4' high or higher; 2) Upon completion of the construction, the applicant must sign and return the Statement of Completion to the St. Cloud Planning & Zoning Department; and, 3) The site plan approved by the Zoning Board of Appeals shall be the only site plan approved for this property. The motion was seconded by Barkalow. Larson said he assumed the landscaping would be approved by staff. That was acceptable to the maker of the motion and the seconder. The motion carried unanimously.

Conditional Use Permit Request/Daniel and Kristen Hughes: Dave Broxmeyer, Senior Planner, stated that this request is for a commercial kennel at the furthest extent of the City limits with St. Augusta to the south. Applicants are requesting up to 50 dogs at any one given time. The kennel would specialize in training security dogs for detection of explosives, mold, bed bugs, etc. Applicants

are also requesting the opportunity to board dogs from the general public. Broxmeyer stated that staff is recommending a maximum of 10 dogs at any one given time; following LDC regulations for signage; requesting more detail in design of fire arms range; potential limitations of utilization of fire arms range; the working dog memorial be moved away from the Co. Rd. 136 right-of-way; a waste management plan be submitted; a Statement of Completion be signed and returned to the Planning Dept. upon completion of the accessory building construction project; and recommended a better quality site plan. Vice-Chair Jamnick opened the public hearing and invited testimony on the request from Daniel and Kristen Hughes for approval of a conditional use permit to operate a commercial dog kennel and training facility in an AG, Agricultural District. The applicant is requesting to operate a commercial dog kennel, which will specialize in the training of dogs to be used by law enforcement and security organizations. The applicants' long range plans include the possibility to train dogs for other detection activities and boarding and training services to the general public. The applicant is proposing to have a maximum of up to 50 dogs at any one given time. (Location: 25156 County Road 136) (CUP-2010-03). The following persons testified:

Daniel Hughes
25156 Co. Rd. 136

He and his wife started Dogs for Defense, Inc. in 2007, and recently relocated from Bismarck, ND, in an effort to expand their business. He is well qualified to build and operate this business. He is recognized as a kennel master by the U.S. State Dept. and is currently working on designing and overseeing the construction of a kennel facility in Kabul, Afghanistan, that meets the Federal requirements. He has been involved with law enforcement for over 10 years and is a certified firearm's instructor with the North Dakota Law Enforcement Academy. He addressed staff's recommendations. Regarding allowing only a 10 dog kennel and requiring a conditional use permit for any additional dogs, he stated that impacts their plans to plan and develop their business. At this time and in the near future, they do not plan to house more than 5 dogs on their property. However, they continue to pursue government contracts that request trained detection dogs. Pursuing government contracts requires a substantial investment. If they were awarded a contract, they would not be allowed to move forward if a new CUP were not awarded in a timely manner. If a CUP were not granted for additional dogs, it would likely force his company to default and prohibit them from doing further work for the government. The current pole barn could adequately accommodate 40 indoor/outdoor runs. Any new construction would require a building permit. Another staff concern

was runoff to the wetlands. Stearns Co. Environmental Services has visited the site and done an assessment. The wetlands are designated Type 2 and Type 3 wetlands. They are not virgin and contain a drain tile system that was installed 30 years ago. Since then, the property has been used for hay production and grazing. Construction of an indoor/outdoor kennel can be done in such a manner as to minimize the drainage. He is willing to submit a waste utilization plan. He stated that the average mature working dog eats about 2 cups of food a day and drinks about 2 cups of water. The average cow produces about 18 gallons of waste per day. He said on their 40 acres within the AG district, they would be permitted to have 40 cows or 200 goats. Depending on the quantity of waste and the number of dogs he houses at any given time, the primary method of dealing with the waste would be to compost it with other organic matter and utilize it on the 40 acres of land. He added that he has discussed dog waste with the company, Waste Management, and they can provide a dumpster for it and take it to a landfill if necessary. He cited a portion of a sentence from staff's recommendation which states: "...a change in function of the kennel (hunting training, breeding, boarding of dogs from the general public, or other use) shall require a new/amended conditional use permit." He commented that he would like to be able to train all dogs for all purposes and breed an occasional litter of dogs. He noted that the most recent explosive detection dog training is being developed from hunting dogs. He requested that the language that restricts the canine training and other activities be changed or removed. Regarding use of the training field and firearms range, he reiterated that Article 7 of the LDC states under Open Space Uses, "Recreation area, athletic field and open spaces are permitted." He said he believes the training field falls into that category, and the use of firearms and hunting are allowed in the AG district. He agreed to provide a more detailed, professional site plan, but addressed some of the wording in staff's memo. The statement that requires live fire activities be supervised by a NRA certified Range Safety Officer should be changed by deleting the reference to "NRA". Staff's recommendation that no outside shooters be permitted to use the firearms range would not allow a local SWAT team that wants to develop canine deployment tactics to use the range. Therefore, he asked that statement be reconsidered.

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| Chuks Ugochukwu | He asked applicant if he can he meet conditions for a 50 dog kennel. |
| Daniel Hughes | Funding would not allow him to create a state of the art 50 dog kennel, but he could meet the minimum requirements with his existing building. |
| Dave Broxmeyer | There is no upper limit on the number of dogs for a commercial kennel. |
| Chuks Ugochukwu | He asked staff why they are recommending only 10 dogs. |
| Dave Broxmeyer | Staff felt that 10 was enough for applicants to start their business, and they could come back to amend their CUP if they want to add more. There is nothing physically barring applicant from running a 50 dog |

kennel. The Health Dept. would be conducting inspections of the property.

Chuks Ugochukwu He asked if there are any issues with waste management.

Dave Broxmeyer Tonight was the first he had heard about the option of composting the waste on site, and that is an acceptable method of dealing with the waste.

Chuks Ugochukwu He asked about the firing range.

Dave Broxmeyer The reason staff included the provision that no outside shooters should be permitted was to prevent recreational shooting and to limit the range to training for the dogs.

Susanne Barkalow She asked staff if there is anything in the ordinance relative to noise.

Dave Broxmeyer He stated that staff's memo cites State Statute Noise Standards for discharge of firearms.

Susanne Barkalow She was referring to the noise made by 50 dogs.

Dave Broxmeyer That is one of the reasons commercial kennels are only permitted in AG districts and in commercial areas. However, outside dog runs are prohibited in commercial areas.

Susanne Barkalow She disclosed that her daughter is a nationally certified animal control officer and has worked with canines. Applicant has indicated that he would like the opportunity to raise an occasional litter. She asked him if they would be included in the 50 animal count.

Daniel Hughes He explained that a litter of dogs under the age of 6 months are not typically included in the count. He does not want to violate his conditional use permit unintentionally.

Susanne Barkalow She asked how often he would get a large enough contract that would warrant the need for a conditional use permit for 50 dogs.

Daniel Hughes It could be rare; however, sometimes when the contracts become available, they are to fill an immediate need. In other instances, there are long term contracts.

Susanne Barkalow She asked if the kennels will be indoor or outdoor.

Daniel Hughes There will be a small indoor climate controlled area with a doggy door to a larger outside exercise area.

Evan Larson He said he thought applicant mentioned accommodating 40 dogs.

Daniel Hughes	He clarified that if no additional building permits were approved, the existing pole barn could accommodate 40 dogs.
Evan Larson	He asked if a conditional use permit could be approved for 40 dogs in the existing facility with language incorporated that would require completion of additional facilities as required for an additional 10 dogs. He questioned if there is some language that could be included that would allow applicant to raise an occasional litter of puppies.
Dave Broxmeyer	He stated that the animal control ordinance states that dogs 6 months of age and under are exempt from being counted in the 2 dog limit for a single family home.
Evan Larson	He assumed an occasional litter would not be considered breeding and asked if there is a numerical threshold that would be considered breeding.
Dave Broxmeyer	The City doesn't have a standard.
Evan Larson	Staff's recommendation was that live fire activities be permitted between 8 a.m. and one-half hour before sunset. He asked if there could be a more restrictive time frame during the middle of the day.
Daniel Hughes	He would be willing to reduce those hours to possibly 10 a.m. to 4 p.m.
Valerie Ohman	She asked how many employees would be required with 50 dogs.
Daniel Hughes	At least one or two trainers and an additional two people to help with kennels - cleaning, feeding, watering, etc.
Charlie Voigt 25332 Co. Rd. 136	He objects to the request. He is applicants' closest neighbor and is less than 1,000 ft. from applicants' property. He did Animal Control for St. Augusta Township for over 50 years and then became part of St. Cloud. His share of the cost to redo the tiling on what was originally his brother's land was \$8,000 @ 18% interest. Joe Kenning paid for the other 20 acres that he just bought. Another \$15,000 of tiling was done on his property, and that drains all of his property. That was farmed from '84-'90. He wishes the applicant would have come and talked to him about his plans when he purchased the property. He doesn't want to put up with barking dogs. Mr. Voigt said his brother had no paperwork to prove that he had contributed \$8,000 toward the tiling, so his nephew said he was kicked off the property. If the property is going to a commercial use, then he should lose AG rights. Much of that land was in green acres, and that should also be lost.
Susanne Barkalow	She asked if he lives immediately to the north of applicant.
Charlie Voigt	He lives to the north and east.

Susanne Barkalow	It appears there are wetlands to the north. She asked where his property is in relation to that.
Charlie Voigt	His property is to the north and east. His primary concerns are noise and security of the kennels.
Tony Goddard 25554 Co. Rd. 136	He is more concerned about the shooting range. Staff's recommendation would allow as much shooting as they want during the day. He already hears noise on that property from dogs. Firearms are more of a concern. He found a lot of information on the internet where gun clubs and shooting ranges are the subject of court cases across the country. In one example, a couple won a large award from a gun club for an increase in firearm noise at a range of 560 yds. from the subject property which is closer than his property. He read a quote from the St. Cloud Noise Control Ordinance: "It will be unlawful for any person to make or cause to be made any loud unnecessary or unusual noise which either a noise disturbs or affects the comfort, repose, health or peace of others." He believes 12 hours of firearms noise would not fall within that noise regulation. He is not in an AG district; he is in a residential district but will be affected by the noise. He found the State's regulations about noise to be very arcane and asked if the City will be able to enforce those State regulations. It would not be appropriate to allow something that the City is not able to properly administer. In the previous court case he cited where the couple won the monetary award, there was a demonstrated effect on property values. There are negative effects on people living in the vicinity of applicant's property. The quality of life will be affected by the noise from barking and firearms. The kennel may be an allowed use; however, the shooting range is accessory to the use and does not have to be allowed. He said it is not the sole responsibility of the Board to help the applicant make a profit at their chosen business but to protect the rights of the property owners who live in the vicinity.
Susanne Barkalow	She asked if limiting the use of firing on the range to specific hours such as 10 a.m. to 4 p.m. would lessen his opposition.
Tony Goddard	He asked if members of the Board would like firearms being discharged between the hours of 10 a.m. and 4 p.m. in their neighborhood. He doesn't think it's sensible to think that's not an impingement on the lives of people that live around this property. He lives two lots north of 255th St. He has heard persistent barking during the night. He assumed it was the Hughes' dog(s) barking because the neighbors said it was.
Chuks Ugochukwu	The AG district allows commercial dog kennels, and it appears applicant can meet the separation requirements from neighbors. He asked Mr. Goddard how applicant could operate his business to the satisfaction of the neighbors.

Tony Goddard	He pointed out that firearms are not an essential part of a dog kennel.
Chuks Ugochukwu	He said he is not suggesting that the firing range and dog kennel must be together.
Vice-Chair Jamnick	The papers passed out by Mr. Voigt have signatures of 22 people opposed to the kennel and also cite three State Statutes.
Tom Zieglmeier 4026 255 th St.	His property is about 1/4 mile northeast of the Hughes' property. His concerns are noise and safety. He has young children, so the firing range is a concern. He and his wife don't let their children outside during hunting season. Due to the topographical features of the property, noise travels no matter what the number of dogs.
Tim May 4268 255 th St.	His property is the first lot north of 255th St. He is also concerned about the noise level. The noise carries significantly across the pasture. Applicants just purchased their property this summer. The neighbors have been in the area longer and feels their interests should be protected.
Susanne Barkalow	She stated that the property is zoned AG, so there could be cows and sheep, etc. on that property making noise.
Dave Broxmeyer	He added that the LDC also allows the discharge of firearms in the AG district; for example, target shooting in their back yard.
Tim May	He commented that cows and sheep are not nearly as noisy as a bunch of barking dogs. He contacted the dog kennel that he uses to find out the maximum number of dogs that they kennel, and it was 22. It is extremely noisy on the premises when he takes his dog there.
Jerry Koltes 25615 Co. Rd. 136	He asked what size ammunition will be used in training the dogs. He asked if they will use high power rifles or use blanks and shoot over the top of the dogs' heads.
Daniel Hughes	They will use live fire from pistols, rifles and shotguns. The reason for using a real weapon rather than blank fire is because the rifle and pistol break the sound barrier when traveling up the muzzle of the firearm. That sound is different than the sound of a blank.
Sue McGuire 25554 Co. Rd. 136	She is concerned about the noise from 50 large barking dogs and a shooting range. She has lived at her residence for 20 years and has never been bothered by the cattle. This past summer she has heard a dog that constantly barks, and she has heard that it belongs to the Hughes. The City's future land use plan has this area designated as High Density Residential, but no one will want to develop it if there is a kennel and shooting range in the area. There is some concern about runoff into the wetlands from this property. Just 300' to the south of this property is Neenah Creek.

Pat Morin
917 13th Ave. SE

She lives several blocks west of Hwy. 10 in Southeast St. Cloud. Del-Tone shooting range is on the east side of Highway 10. Automatic weapons are shot out there occasionally, and it sounds like a rivet gun in the neighborhood even though Del-Tone is more than a quarter mile away. She can't hear handguns being fired, but she can hear shotguns when they are trapshooting. The sound of weapons being fired is hard on neighborhood dogs. The Hughes' request is too close for comfort to

residential areas. Relative to the occasional litter, all dogs in a litter are not able to go through this type of training; therefore, they would be unwanted dogs.

Daniel Hughes

He apologized to Mr. Voigt for not visiting with him, but he has been out of the country frequently. Regarding the barking dogs heard by the neighbors, he has two German Shepherds that live in the house. When they are outside playing, they may bark but never for more than 5 minutes. The dogs sleep inside at night, so it is not his dogs that the neighbors hear barking at night. For safety purposes and to reduce noise, he has proposed that the range training field be surrounded by a large berm on all four sides. That will protect anyone from walking onto the training field. There will also be signage and flags that will indicate that live fire is being conducted. They also plan to plant evergreen trees surrounding the berm to reduce noise. He will provide a more accurate and detailed site plan of the firearms range. In having an indoor/outdoor kennel facility, he could close the doggy door and have the dogs remain inside if he felt the dogs were becoming a nuisance.

Susanne Barkalow

She asked the height of the proposed berm.

Daniel Hughes

He will work with an excavator. He plans an approximate 10' height on the sides and a berm behind the backstop. He is proposing a secondary stop that would catch any projectile. Behind that would be an additional berm that would be 15' high.

Susanne Barkalow

She asked where the firing range would be located.

Daniel Hughes

It would be on the southernmost portion of the property. It would meet the minimum setbacks from the property line, but would keep it as far south as possible which would keep it ¼ mile from anyone living in a Rural Residential district.

Evan Larson

The firing range is obviously a point of contention for the neighbors. He asked applicant if he could partner with a local gun range to provide that service at an offsite facility.

Daniel Hughes

The logistics of moving dogs and the equipment they train with is difficult. He could get 2-3 dogs in an SUV or pickup. He would be required to have a trailer that would have space for 10 dogs.

Evan Larson	He has been involved in these types of facilities in different locations and assumes noise has been an issue at those facilities as well. He asked if he is aware of any other noise mitigation measures that could be used.
Daniel Hughes	One thing that encourages dogs to bark in a kennel setting is their ability to see another dog barking. His plan is to have privacy kennels which would not allow dogs to see each other. Because he will be very familiar with the dogs, he will know which ones work well in kennels next to each other.
Evan Larson	If applicants' request is approved as requested, he assumes there will be complaints from neighbors in the future. He asked applicant how he could assure that won't happen.
Daniel Hughes	He has done extensive research and thinks he has found a location that is zoned correctly and would meet his needs.
Evan Larson	He asked if it is necessary for the firing range to be operational every day.
Daniel Hughes	He would not do firearms training with the dogs on a daily basis. He would be comfortable with limiting the hours, but it would be difficult to limit it to certain days because he may use firearms several days in one week and then not use firearms training again for several weeks.
Evan Larson	He asked staff about future development in that area.
Dave Broxmeyer	The City's 2003 CP does indicate the area from 255 th St. down to 250th St. as an area for future high density mixed residential uses. There are plans for an I-94 interchange at Co. Rd. 136. Therefore, it is anticipated that be a much more intense urban development area in the future.
Valerie Ohman	She asked applicant if there is a chance of the dogs getting loose or if the property will be fenced.
Daniel Hughes	They will eventually fence the entire 40 acres with a 4' high sheep type fence. The dogs follow voice commands and are on leads. These are very expensive dogs, so it is imperative that they are in control of them at all times.
Charlie Voigt	He asked if they would use live ammunition on the firing range.
Daniel Hughes	Yes, they would.
Charlie Voigt	He asked if they would use the range in the winter.
Daniel Hughes	Yes, they will use the range in the winter.

- Charlie Voigt He asked if he considered the neighbors when the bullets ricochet off the hard snow packed surface.
- Daniel Hughes A backstop would be utilized in addition to the berm. The backstop would catch bullets and fragments. It is important to count the number of rounds that go down range so that the backstop is replaced at the appropriate time to limit the number of ricochets. He pointed out that people are allowed to hunt on AG land with no restrictions.
- Charlie Voigt He said there was trouble in Fair Haven Township with people picking up ricocheted bullets. They have also had problems at Del-Tone. Someone told him that 300 acres is required for a shooting range.
- Charlie Voigt He also asked applicant what he thinks of the tiling that is on the property.
- Daniel Hughes That was done before he ever purchased the property. Regarding the 300 acres for a shooting range, the LDC does not require that. The nearest property to the east of the backstop would be almost 2 miles away.
- Charlie Voigt He reiterated concern about the tiling.
- Linda Coltus She asked what breed of dogs would be housed and trained in his kennel.
- Daniel Hughes There won't be a particular breed. They will be dogs with a high drive, usually medium to large size dogs.
- Linda Coltus Her other concern as a neighbor is noise. She lives close to Co. Rd. 136 which has a lot of traffic and people bike riding in the summer. She likes to sit outside in the summer and doesn't want to listen to gunshots all day long. She expressed concern about stray bullets and dogs getting away.

There being no one else wishing to speak, the public hearing was closed. Larson stated that the biggest concern that has been expressed is noise. Larson moved to table the request until the January meeting to give the opportunity for applicant to have a plan in place that will be satisfactory to the applicant and the neighbors to address the noise concerns, address hours of operation, have a detailed site plan and explain how the berming and backstop work. The motion was seconded by Barkalow and carried unanimously. Barkalow informed the audience that if they have a problem with a barking dog, they can call the City to register a complaint about it. Someone from the City will go out to the property and verify the complaint.

2011 Zoning Board of Appeals Schedule: The 2011 Zoning Board of Appeals meeting schedule was included in the packet for the Board's information.

Other Business: Jamnick stated this is his last meeting, leaving two vacancies on the Board. Broxmeyer informed the Board that Mr. Wilner appealed the ZBA decision from the November meeting to the City Council, and the Council upheld the ZBA's decision.

Adjournment: Barkalow moved that the meeting be adjourned. There being no further business, the meeting was adjourned at 8:51 p.m.

Chuks Ugochukwu