

**Wyskiel,
Boc,
Tillinghast
& Bolduc, P.A.**
Attorneys at Law

*Christopher A. Wyskiel
William E. Boc
**D. Lance Tillinghast
*Michael J. Bolduc
Thomas G. Ferrini
*William R. Phipps
***Bain D. Testa

* also admitted in Maine
**also admitted in MA, ME & VT
***also admitted in MA

February 22, 2013

Esther Tardy-Wolfe
Mediator for Great Bay Kennel/Neighbors
c/o Durham Town Offices
15 Newmarket Road
Durham, NH 03824

RE: Applicants' Response to Neighbors' Written Suggestions

Dear Esther:

When we last gathered, Mr. Renner presented the attached four pages (Exhibit A) as a menu of concerns/suggestions the neighbors requested Great Bay Kennel to review and consider, agreeing to and/or implementing. We provide this written response to help us reach common ground understanding.

Ballestero's Report

Since we have last met, the Applicants agreed to the Planning Board's hiring of Professor Tom Ballestero (from UNH) to act as an independent consultant on issues of dog waste disposal, groundwater impacts, etc. A copy of Dr. Ballestero's February 15, 2013 report is attached (Exhibit B).

The Sawyers will agree to the Planning Board adopting all the "Conditions" and "Recommendations" summarized on the bottom half of page 7 of Dr. Ballestero's report, as Conditions of Approval that can be made a part of the Planning Board's Site Review and Conditional Use Permit application approvals. In fact, the Sawyers have already implemented the dumpster/landfill disposal recommendation which was Dr. Ballestero's preference (making unnecessary any installation of monitoring wells, etc.). Mike Sievert's Site Review Plan includes the interceptor trench discussed at Dr. Ballestero's recommendation #3. Mike Sievert has/will design the bio-retention system (rain garden's) modification to address recommendation #4. Dr. Ballestero had discussed this design change with Mike Sievert and they are in agreement how it can best be done. The Sawyers agree to the twice a year testing (recommendation #5) which is one test, costing approximately \$60.

Iowa Code Chapter 67

Pages 1 and 2 of Exhibit A are reprints from Iowa statutory law. As such, they do not directly apply to New Hampshire facilities, but the neighbors' recommended analogy is understood.

Defining the dog day care is unnecessary. The scope of the pending application and existing Court ordered limitations on outdoor dog populations more specifically defines Great Bay Kennel's use.

Implementing the new design and constructing new buildings are the best means to implement the standards addressed by sub-paragraphs a-e, g, i and j. To continue to argue for the defeat of the pending application advocates for, the status quo and this deficient facility cannot meet all the recommended standards of all sub-paragraphs.

With respect to storage food supplies, it is primarily retained at the kennel. The new structures and new design will enable appropriate storage for the day care in the new buildings (sub-paragraph f).

Sub-paragraph h is best addressed by the Sawyers' agreement to implement all Dr. Ballastero's recommendations.

With respect to sub-paragraph i, Great Bay Kennel's proximity to the Great Bay Animal Hospital (veterinarian, Dr. McKiernan), makes this dog day care site especially compliant with the Iowa recommendation. Dr. McKiernan and the Sawyers already enjoy cooperative interaction. Dogs that become sick or are injured are immediately attended to by Dr. McKiernan.

Sub-paragraphs j, k and k are best implemented by allowing the new design with the multiple, indoor, outdoor but sheltered, and outdoor separately fenced areas. All will provide Great Bay Kennel with multiple operation alternatives that will promote management practices to minimize noise while still providing appropriate dog day care.

Sanitation Requirements

The Sawyers do now wash and sanitize as recommended (sub-paragraph d). Outdoor modifications pursuant to Mike Seivert's modified design (incorporating Ballastero's recommendations) will best divert and treat run off.

The Sawyers now regularly control vermin festation by twice a month professional applications (Orkin – see sub-paragraph b).

Operations

Attached as Exhibit C are copies of Great Bay Kennel's Standard Agreement, Boarding Information (intake info) and Waiver/Agreement to Treat, etc. These forms will continue to be used and address all of the recommended operation standards (sub-paragraphs a(1) & (2)). The Sawyers agree with the recommendations of Operations a (3) & (4). The attached forms assure implementation.

With respect to separating dogs into different play groups, that is done now after screening of new dogs and trial play/interpretation periods as explained in our last session (hence the different outdoor fencing areas). The new site's addition of alternative inside areas will give those in charge of operations many more options/tools in their tool box.

The Sawyers agree with Operation recommendations c, d, e and f. They adhere to these and their current practices will continue.

The Sawyers are unaware of any science or industry standard supporting the play group limitations of g & h. Their current practices are sound, workable and Court limited; the new design will allow them more effective management options.

Great Bay Kennel does have an employee handbook, sections of which address hiring, training and so forth. Presently, all employees are well experienced. New employees are never left alone with dogs, but rather are trained and work under the supervision of senior employees until capable.

With respect to Exhibit A, pages 3 and 4

Mr. Sawyer's 1995 letter was written with respect to overnight noise complaints associated with the boarding kennel. That is all indoor contained.

Besides all that is discussed above, submission of a more specific business plan is unnecessary. How, when, where and in what numbers (subject to existing Court Orders) dogs are kept in the new facility with multiple options is best left in flux to allow management the ability to remain flexible and responsive to manage operations to best eliminate/minimize noise.

The Sawyers have explained why it is best not to fully enclose the barn.

In our last session, the Sawyers explained they will not agree to barking suppressors, the specifics of which are unknown.

A two year moratorium on increasing numbers is unreasonable. The number of dogs that can remain in the outdoor fenced in areas will always be limited by the existing Court Order.

Esther Tardy-Wolfe

Page 4

February 22, 2013

The Sawyers' sound expert has explained how sound proofing fencing is ineffective for the current design application. Such fencing is used and effective only to suppress sound within very close proximity (think urban setting, other side of fence to back yard pool, 10-15 feet away).

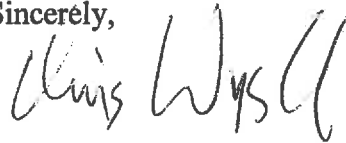
Acentech was the independent noise evaluation conducted in 2011, approved January 2012 – Site Review Application process.

Mike Sievert will address his revised driveway permit application and how recent traffic counts support no needed modifications.

Building the new facility will enhance abutting property values compared to maintaining the status quo.

We look forward to hopefully reaching a consensus statement to be presented to the Planning Board.

Sincerely,



Christopher A. Wyskiel

CAW/nl

cc: Geoff and Jaki Sawyer
Michael Behrendt
Michael Sievert

nl\Document\Great Bay Kennel\Mediator.ltr

Dog day care. Drawn from Iowa Code chapter 67 Animal Welfare

67.11(1)

Definition.

"Dog day care"

means a facility licensed as a commercial kennel or a boarding kennel and designed and operated with the intention that a dog admitted to the facility is allowed, in compliance with this rule, to mingle and interact with other dogs in one or more playgroups operating in the facility. The purpose of a dog day care is to allow dogs participating in the day care to become socialized through interaction in playgroups with other compatible dogs. A kennel that operates as a dog day care shall not provide overnight boarding or other kennel activities unless, during the time that the day care operation is closed, the kennel is operated in a manner consistent with applicable kennel rules including, but not limited to, provisions that restricts the commingling of dogs which state: Group housing is permitted for animals which are compatible with one another. Adequate space shall be provided to prevent crowding and to allow freedom of movement and comfort to animals of the size which are housed in the facility. Females in estrus shall not be housed with males, except for breeding purposes.

Facility requirements.

A facility licensed to be a dog day care shall comply with the following facility requirements:

a.

Buildings shall be of adequate structure and maintained in good repair so as to ensure protection of dogs from injury.

b.

Shelter shall be provided to allow access to shade from direct sunlight and regress from exposure to rain or snow. Heat, insulation, or bedding adequate to provide comfort shall be provided when the atmospheric temperature is below 50° F or below that temperature to which the particular dogs are acclimated. Indoor facilities shall be provided for all dogs.

c.

Indoor and outdoor facilities shall at all times be provided with ventilation by means of doors, windows, vents, air conditioning or direct flow of fresh air that is adequate to provide for the good health and comfort of the dogs. Such ventilation shall be environmentally provided to minimize drafts, moisture condensation, odors or stagnant vapors of excreta.

d.

Ample lighting shall be provided by natural or artificial means or both during sunrise to sunset hours to allow efficient cleaning of the facilities and routine inspection of the facilities and dogs contained therein.

e.

Ceilings, walls, floors, furniture, and play equipment shall be constructed to lend themselves to efficient cleaning and sanitizing. Such surfaces shall be kept in good repair and maintained so that they are substantially impervious to moisture. Floors and walls to a height of four feet shall have finished surfaces. Upholstered furniture or carpeting shall not be permitted in that portion of the facility to which dogs have access.

f.

Food supplies and bedding materials shall be stored to adequately protect them from contamination or infestation by vermin or other factors that would render the food or bedding unclean. Separate storage facilities shall be maintained for cleaning and sanitizing equipment and supplies.

g.

Washrooms, basins or sinks shall be provided within or be readily accessible to each facility for maintaining cleanliness among animal caretakers and sanitizing of food and water utensils.

h.

Equipment shall be available for removal and disposal of all waste materials from the building to minimize vermin infestation, odors and disease hazards. Drainage systems shall be functional to achieve the above purposes.

i.

Facilities shall be provided to isolate any dog that becomes sick or injured or that becomes otherwise incompatible with the other dogs.

j.

Outdoor dog runs and exercise areas shall be of sound construction and kept in good repair so as to safely contain the dogs therein without injury. Floors shall be concrete, gravel or materials which can be regularly cleaned and kept free of waste accumulation. Grass runs and exercise areas are permissible provided adequate ground cover is maintained, holes are kept filled and the ground cover is not allowed to become overgrown.

k.

Group interaction is permitted for dogs that are compatible with one another.

l.

The play area for dogs shall provide for a minimum of 75 square feet per dog.

Sanitation requirements.

A facility licensed to be a dog day care shall comply with the following sanitation standards:

a.

All areas to which a dog has access shall be cleaned and sanitized a minimum of once in each 24-hour period and more frequently as may be necessary to reduce disease hazards and odors. Sanitizing shall be done by washing the surfaces with hot water and soap or detergent, followed by the application of a safe and effective disinfectant. Runs and exercise areas having gravel or other nonpermanent surface materials shall be sanitized by periodic removal of soiled materials, application of suitable disinfectants, and replacement with clean surface materials.

b.

An effective program shall be established for the control of vermin infestation.

67.11(4)

Operations.

A facility licensed to be a dog day care shall comply with the following operational standards:

a.

A dog, including a dog owned by the day care owner or a day care employee, shall be admitted into a day care only after the day care has:

(1)

Subjected the dog to a preentry screening process that adequately evaluates the temperament of the dog, the dog's ability to interact with other dogs in a positive manner, and the dog's ability to interact with humans in a positive manner. The screening shall include, but is not limited to, obtaining a social history of the dog from the dog's owner. A written record of the testing shall be maintained by the facility for the time the dog is enrolled in the day care.

(2)

Obtained from the dog's owner documentation of the medical history of the dog, including the dog's current vaccination status against distemper and rabies, unless exempted by direct, written recommendation of the owner's veterinarian or exempted by state law governing rabies vaccination.

(3)

Determined through documentation or from obvious visual inspection that the dog is at least eight weeks of age.

(4)

Obtained documentation that the dog has been spayed or neutered, if the dog is over six months of age.

(5)

Obtained a written acknowledgment from the dog's owner that the owner understands the inherent risk of injury or disease when dogs owned by different people are allowed to commingle. This written acknowledgment shall be separately signed or initialed by the dog's owner.

b.

The day care shall separate dogs in the day care into playgroups comprised of compatible dogs. Dogs of incompatible personalities or temperament shall be maintained separately.

c.

The day care shall not admit any dog into the day care if the dog has a predisposition to be possessive of either the facility or a person owning or working in the facility.

d.

The day care shall make advance arrangements with a veterinarian to provide emergency veterinary care for dogs at the day care.

e.

A sick, diseased or injured dog shall be immediately removed from the playgroup and isolated. If circumstances indicate that immediate veterinary care is required, the dog shall be taken to a veterinarian or a veterinarian shall be called to examine the dog. The veterinarian can be either a veterinarian whose services have been contracted for by the day care or the veterinarian designated by the dog's owner, if a timely examination by that veterinarian is feasible.

f.

Feeding of dogs and giving of snacks to a dog shall only be provided when the dog receiving the food or snack is outside the vision of the other dogs in the playgroup.

g.

A day care shall not establish a playgroup composed of more than 15 dogs.

h.

A day care shall employ sufficient staffing so that there is a minimum of one person assigned to each playgroup. The person supervising a playgroup shall be in continuous visual or auditory contact with the playgroup at all times.

*offensive use petition-1995 letter to the town by Mr Sawyer-regardless of the kennel or doggie daycare, How and why did his position change with respect and regards for his neighbors rights to quiet enjoyment?

Recommend implementation of both structural and procedural requirements to the Sawyers and the PB as there are currently no rules pertaining to outdoor kennels. The research by Steve Burns has shown that the State of Iowa has a thorough and complete list of rules and requirements which should be adopted by the PB for any and all outdoor kennels.—we ask that GBK file with the Durham CEO a written strategic business plan and operating procedures as part of a biannual operating requirement permit. The Town of Durham has no regulations governing dog day care. These provisions are intended to provide safe and effective guidance for the operation of GBK dog care or other dog day care operations which might open in the future. This is an effort to protect the health, safety and quality of life of both the animals and citizens of Durham

We rec. enclosing the pole barn on all four sides. That would give the required 75 sq' of space for 32 dogs. Dogs could be sent outside —perhaps 5 at a time/for a period of 1 hr and then rotated. That a trained individual would be incharge. If dogs bark or fight, then the owners are given a warning and if the dog does not improve—then dismiss the dog(s). Dogs can be coached. We are looking for Mr. Sawyer's own commitment to "zero noise tolerance" and to institute a "no outside barking" procedure—which could be implemented with training and limited dogs. No outside blaring radios or loud speakers, gun shots, or gun training etc...

Consider placing reasonably inexpensive barking supressors on the external fencing—maybe #4- emit a high pitched sound/inaud to humans/ inhibit dogs from barking. This could be explained and signed upon by the clients of the kennel/daycare upon admission. The initial form would also indicated rabies vaccine, vet contacts, stool clearance etc...

2 year moratorium on increasing numbers of dogs until the sound mitigation issues is satisfied. Regulated by the PB—part of the CUP. While we know that MR Wyskiel played his hand at stating that the reason for the building was to increase the number of dogs, it seems much more reasonable to the neighbors that we fix the sound/noise/nuisance issues first. We suggest that any Judge at this time given the complaints might see this whole business located in an historic and neighborhood location as truly a nuisance and come to a diff. end opinion.

4/4

Soundproofing—we do not agree with the current fencing as the best solution. We have several rec like a “septum” fence which would be a much better absorber of sound. Any holes or gaps will allow sound to travel. Various use of products regularly used—not rocket science. The base of the fencing has to hit the ground and not leave any gap. Over time, , the effectiveness of acoustic mitigation can change due to structural changes , material aging, failure of turf, planting etc.. After the initial build, the acoustic study can be a benchmark for a biannual process for permit renewal. If there are no complaints then these requirements could be waived. If noise continues and the police are involved with “excessive noise complaints” we are asking that the PB review the findings of the police action and review the permit and make rec to further mitigate the noise.

The town promised (Mr. Campbell) an independent noise evaluation in a PB meeting in 2011. Never happened. Also the specific location was derived by Seivert, Wunderlich and Renners walking the property in a limited scope. Is this truly the best place for sound mitigation? Why not nearer to Mr. Sawyers home—and on the backside of the property going out into the woods?? A sound expert could evaluate that option. We have a name of an expert on fencing and placement.

Parking and traffic:—when the Sawyers applied for a variance to increase the size of the kennel, they were denied by the town council. There is an obvious planned increase in traffic flow and if they expect more dogs, then the PB/Town Council has to stay consistent and reject any increase. What about numbers of trucks and trailers driving into the driveway—any rules on this??

Personal issues with torn up driveway/ rutted front of mailbox/ banged mailbox for impatient people going around onto our property—to avoid the parked cars waiting to turn into the Sawyers.

Property devaluation—Many records can be produce of zoning proceedings where this has been an obvious issue. Three specific examples of doggie day care/kennels were rejected due to – traffic/reduced value of surrounding properties/issues of waste—especially worrisome to the Pilars and the Renners, due to the culvert coming onto our property and clearly nearer than the ¼ mile radius where wells could get contaminated.

The GBK need to demonstrate to the Town of Durham an adequate waste treatment program with periodic inspection and maintenance—especially after heavy storms etc. Untreated dog waste can be introduced into ground water with obvious resultant problems. The kennel must develop a disposal plan consistent with the towns effort to minimize pollution into the OR watershed. Cleaning and inspection of outlets/culverts etc. damages fixed immediately.

Great Bay Kennel
Day Care Release Form

Waiver, Assumption of Risk, and Agreement to Indemnify and Hold Harmless.

I, _____, owner of the dog(s)
(pet owner's name)
named _____ have read and agree to the following:
(pet name)

1. I understand that attendance at a dog service facility is not without risk to my dog(s), myself, members of my family or guests who may attend. Any dog(s) to which I (we) may be exposed may be difficult to control and may be the cause of injury even when handled with the greatest amount of care.
2. I understand that my dog(s) will participate in a play group daycare program. I understand that even with extreme care and monitoring of playgroups that injuries can happen. I hereby agree to indemnify and hold harmless Great Bay Kennel, its employees, owners, agents and other dog owners from any and all claims, or claims made by any member of my family or any other person in relation to any and all injuries that may occur.
3. I hereby waive and release Great Bay Kennel, its employees, owners and agents, from any and all liability of any nature for injury or damage which I or my dog(s) may suffer including specifically, but not without limitation any injury or damage resulting from the action of any dog(s). I expressly assume the risk of any such damage or injury while attending any daycare, grooming, boarding or other function of Great Bay Kennel or while on the grounds or the surrounding area.
4. If my dog(s) becomes ill or injured, I hereby waive and release Great Bay Kennel, its employees, owners and agents from loss or damage from disease, death, escape, theft, fire, injury, injury to persons, other dogs or property by said dog(s), or other unavoidable causes.
5. I understand that in the case of an emergency involving my dog, the staff of Great Bay Kennel will bring the dog(s) to a veterinarian. The staff will attempt to use the dog(s) own vet if time and distance allows. In cases of emergency Great Bay Kennel staff will use Portsmouth Emergency clinic, otherwise any other local veterinarian may be used. I understand that all veterinary fees and charges are my responsibility and not the responsibility of Great Bay Kennel.
6. If my dog(s) is brought to daycare with fleas, the staff at Great Bay Kennel will treat my dog with a flea bath at my expense.
7. I understand that if I do not pick my dog(s) up from Great Bay Kennel Daycare by 6 pm I will be charged a late fee of \$15. I further understand that if I do not pick my dog(s) up by 7pm my dog(s) will spend the night at Great Bay Kennel and I will be charged an overnight fee.
8. I understand that Great Bay Kennel reserves the right to terminate services at any time for any reason.

Signature(s) _____ Date _____

Exhibit C

Great Bay Kennel Standard Agreement

By accepting your pet for boarding and/or other services, the owners of Great Bay Kennel agree to provide it with as high a level of safety and comfort as possible following the principles outlined in our Bill of Rights for boarded animals. The below conditions also apply:

1. No animal will be admitted without proof of current rabies, distemper, etc. and for dogs only, bordatella (kennel cough) vaccinations, or with any infectious disease; animals with fleas must be treated before admission for boarding.
2. If someone other than the owner who is unknown to the kennel management is to pick up the pet, the kennel must be notified in advance, or that person must have written authorization from the owner.
3. Great Bay Kennel cannot be responsible for the loss or destruction of a pet's toys, bedding or other property, nor can the kennel be held responsible for self-inflicted injuries or preexisting medical condition, and is not liable for any other damage greater than the amount of its insurance coverage.
4. In the event of injury to, or illness of my pet, and after the kennel has made all reasonable effort to contact me or my designated emergency contact person, I authorize the management of Great Bay Kennel to take whatever measures are deemed appropriate for the well-being of my pet, including taking it to a veterinarian.
5. Unless credit has been arranged in advance, all charges (including any veterinary fees) must be paid in full before the animal can be released.
6. If a pet is not picked up within 30 days of the expected pick up time without owner notification of the change in schedule, Great Bay Kennel reserves the right to take legal possession of the animal.
7. This agreement will remain in effect permanently, unless cancelled by either party.

I, the undersigned, have read and agree with its terms. By signed this agreement, I affirm that I am the legal owner (or authorized agent for) the pet which has been left in the care of Great Bay Kennel.

Signed _____ Date _____

Great Bay Kennel

Boarding Information

Owner _____

Pet's Name _____

Street No. _____

Breed _____

City _____ Zip _____

Color _____

Home Phone _____

Date of Birth _____

Cell Phone _____

Sex M or Mn F or Fs

Vet _____

Medical Problems _____

Vet Phone _____

Emergency Contact _____

Medications _____

Brand of Food _____

Amount in cups _____ x _____ per day

IMMUNIZATION DATES

Canine

Rabies _____

Distemper Combo _____

Kennel Cough _____

Feline

Rabies _____

Distemper Combo _____

Fears: Vacuum() Thunder() Other _____ Rawhides: Y or N

Good with: Other Dogs _____ Adults _____ Kids _____ Swimming: Y or N

Special Needs/Comments _____

Email _____