

**Town of Cumberland
Board of Adjustment and Appeals
Minutes of Meeting
Thursday, September 9, 2010**

I. Call to Order:

The meeting was called to order at 7:10 p.m.

II. Roll Call:

Present: R. Scott Wyman, Chair, Andrew Black, Ron Copp, Matt Manahan, Mike Martin, Christian Lewis (alternate)

Absent: David Joyce,

Staff: Bill Longley, Code Enforcement Officer, Pam Bosarge, Board Clerk

Mr. Wyman welcomed the applicants and gave an overview of the rules of procedure for the meeting. Mr. Wyman stated there would be an opportunity for public testimony.

III. Hearings and Presentations:

1. **Interpretation Appeal: Mary Dickinson Wood of 285 Main Street,** Tax Assessor Map U11, Lot 30 is appealing the Code Enforcement Officer's finding of violation in the following manner: Alan E. Wolf, Esq. Representative.
 - More than 3-dogs registered at this address:
 - Selling dogs from this location; and
 - Altered her sign

Mr. Longley stated upon receipt of a complaint he took the following actions.

- Reviewed the map and lot file
- Drove by the property and took a photo of the second sign which was not permitted or approved by the Board.
- Reviewed the dog licenses in the clerk's office. There were four dogs at the address; the zoning ordinance defines a private kennel as "Any premises used for harboring of more than three dogs under one ownership that are more than 6 months old".
- Website advertises sale of dogs, this information is included in your packet.
- There is no sign permit for the second sign and the use is not consistent with the approval from the Board in June 2001.
- This information was reviewed with Natalie Burns, Town Attorney, e-mails are included in packets. In subsequent e-mails Ms. Burns advised to take action.
- Prior to any written action he spoke by telephone to Ms. Wood and asked her to come into the office and discuss the concerns. Ms. Wood was unavailable and the notice of violation was sent.
- Ms. Wood has a state Breeding Kennel license and has been town licensed since 2008.
- The sign was still displayed at the property this morning.

Mr. Manahan asked if it was clear whether the Board has authority to review the request.

Mr. Longley stated he felt the Board had jurisdiction to give an advisory ruling.

Mr. Manahan asked if the Board should give an advisory decision.

Mr. Alan Wolf, Esq., representative stated the applicant would like the interpretation appeal heard, and then they would ask as a separate item for a special exception.

Mr. Manahan asked for clarification on the applicant's request of the Board.

Mr. Wolf stated the applicant is looking for a decision tonight.

Mr. Wolf addressed the first violation of more than three dogs; stating dogs *Marilyn*, *Lola* and *Striker* are licensed to Mary Wood and *Mama Mia* is licensed to her daughter Katie Wood. Mr. Wolf continued that any home that has four dogs has a "private kennel" by zoning ordinance definition.

Mr. Black asked if it was permissible to have ten dogs and license them in four different children's names.

Mr. Lewis asked how often dogs were advertised for sale on the internet, and how many dogs have been sold in the last three years.

Mr. Wolf stated it depends on the number of litters.

Mr. Lewis asked if this were Ms. Wood's primary business.

Mr. Martin asked how many dogs were sold in 2010.

Mr. Wolf stated in 2010 there were two litters approximately nineteen puppies, and in 2009 less than twenty.

Mr. Martin asked is that typical?

Mr. Wyman stated there has been a breeding kennel license since 2008.

Mr. Wolf stated a municipal kennel license for showing, exhibition, and breeding has been issued to Ms. Wood through the Town Clerk's office since July 28, 2006. Ms. Wood is not hiding anything; she has complied with all the licensing regulations.

Mr. Black asked about remedial action.

Mr. Wolf stated they have filed a sign permit application for the additional sign.

Mr. Longley stated he can't issue a sign permit for a non approved business.

Mr. Black asked Mr. Wolf if his client had come into compliance since the notice.

Mr. Manahan stated Ms. Burns answer in the e-mail dated 6/11 regarding retail sales was an accurate representation.

Mr. Wolf stated Mr. Longley's advice changed after reviewing the website, there is no difference between advertising a litter of puppies in a local paper and having a website 24/7 that tells the world you sell this product or puppies, the difference is the degree at which the business is operated.

Mr. Wolf stated his client was advised by the Town Manager to remove the sign and lay it down.

Ms. Wood stated she met with Mr. Shane, Ms. Daniels, and Ms. Flanigan for two hours, and was advised to take down the sign until a decision was made.

Ms. Wood stated most of her dogs are special needs dogs or hunting or obedience champions; a state license is required to sell puppies in Maine, you need a vendor license. A kennel license is required for five dogs, she has been stated licensed since 2007 and has had a town kennel license for five years. She has boarding contracts where dogs are registered through the American Kennel Club (AKC) in her name; she does not give breeding rights to puppy purchasers. The dogs are sent to their boarding homes, to be owned for life and registered in their prospective towns. The dogs may return for breeding or showing.

Mr. Black asked if she retained some ownership rights, he asked the number of contracts and sales of dogs.

Mr. Wolf stated purchasers buy the puppy, they own it and it may be brought back for breeding.

The Board asked for clarification on the number of boarding contracts, dogs placed with special needs families for therapy pets etc.

Ms. Wood stated there might be 7 to 10 dogs placed with families with special needs.

The Board discussed the definition of ownership.

Mr. Wyman asked for comments from the public that were in favor of the applicant.

Ms. Joanne Hotham of Rochester MA stated she lost her dog Katie a 10-year old golden, she found Ms. Wood's website and has received a dog Luana, and she is a wonderful dog. Ms. Wood is dedicated and it would be a disservice to the town to stop her services.

Ms. Denise Lessard of Cumberland stated she owns one Ms. Wood's dogs and the dog is solely their responsibility, when it returns to the kennel they bring food, medications etc.

Ms. Jill Simmons of Falmouth stated in regards to the second violation of selling puppies; the Board should understand that Ms. Woods is one of two nationally known breeders in Maine. She has shown dogs in the Westminster dog show. Her dogs are tested for hearts, eyes, hips, and elbows. Ms. Wood is a dedicated AKC breeder this is her life's work, and she has quality dogs.

Mr. Wyman stated it is important to remember this hearing is not about Ms. Woods and her experience, quality of dogs etc. This is not personal; the hearing is about conformance with the Town zoning ordinances.

Ms. Lauren Dickinson, daughter stated her step-mother and father have purchased dogs from her Mother.

Mr. John Saxony of Rochester read Russell Dore's letter.

Mr. Wyman stated all letters received will become part of the record in support, opposed or on a neutral basis. Mr. Wyman asked if the honor of time for people who have written letters to not read them aloud.

Mr. Brian Wood, of 358 Main Street stated his wife Mary had sought council from the Town Manager and Ms. Flanigan, and felt she was in compliance. It is unfortunate that she didn't know she couldn't hang the sign. Tonight they are asking to be allowed to do what she was given the okay to do. They wouldn't be here without a complaint of noise. They are asking to continue to operate their business.

Mr. Manahan stated he was curious who at town hall told her how to operate her business.

Mr. Wood stated Debbie Flanigan.

Ms. Jennifer Mason stated she was in favor of the special exception and questioned the approval in 2001.

Mr. Longley stated the Board approved pet therapy and master gardener. Ms. Wood was asked do you sell dogs and as reflected in the minutes she stated no. The website states she is selling dogs.

Ms. Mason stated pet therapy would imply breeding of dogs.

Mr. Martin stated the Board is not disputing her business, the appropriateness of the location and zones are the issue.

Ms. Mason stated you need to live with the dogs to have quality pet therapy dogs; you couldn't locate this business on Route 100.

Mr. Black asked Ms. Mason if she had read the minutes.

Ms. Mason stated no.

Mr. Wyman asked if there was methodology, and a process to develop Pet Therapy Dogs.

Ms. Mason stated yes, pet lineage etc., Ms. Wood is not hiding anything; she read the letter from Mr. Jim Bernier.

Mr. Wyman asked for testimony that was in opposition.

Mr. Michael Perfetti of 283 Main Street stated he would encourage the Board support the CEO's violation notice. He purchased his property in 2003 based on character of the 1890's house and location and size of the property. He wanted his children to be able to walk to school and a small lot would limit mowing and maintenance time. His lot is 1/3 of an acre in a zone that requires a 2 acre minimum. His lot and the neighbors were historically one lot and divided.

Mr. Perfetti presented a power point presentation highlighting the following:

- Side setback of 3' to property line
- Kennel sits 4.5 feet from their backyard
- There is 9' between the two structures
- Spreadsheet stating: 30 instances of barking dogs at sound meter 100 decibels; the Ordinance allows 60 decibels.
15 instances of odor
17 confirmed times of 8-12 dogs on average

He stated when he purchased his property in 2003 he didn't know about the numbers of dogs, smell, the retail operation, and dogs barking intermittently at all hours. The dogs bark from 6:30 a.m. to 8:00 a.m. and when they walk in the backyard. From their front living room they can hear intermittent barking, he has called the Wood's as late as 10:30 p.m. regarding barking dogs. There have been rodents in the area

attracted by dog food. The Wood's did call Terminex. Mr. Perfetti stated the minutes of June 14, 2001 state one thing and the applicant is telling you another. I don't enjoy this, I respect people's opportunity to earn a living; however, these uses are not allowed in the MDR district, they are allowed in the RR1 (4 acre minimum) and RR2 (2 acre minimum) and the Industrial zone. Animal husbandry is allowed on 3 or more acres. He loves his house it was built in 1890 and he just repainted it. Since they have lived there they have put up with customers on weekends, smell, barking, and rats. On July 4th there was dog food on his property. He would encourage the Board to support the decision of the Code Officer even if it is advisory.

Mr. Lewis asked how many times he called to report barking.

Mr. Perfetti stated he did call with a complaint once and didn't receive a call back from dispatch.

Mr. Lewis asked if the kennel existed when he purchased his property.

Mr. Perfetti stated yes, and was enhanced in 2004. When he purchased his property he conducted his due diligence, he asked the previous owner if the dogs were an issue and was told no. He also parked in the Church parking lot across the street to assess the kennel.

Mr. Lewis asked if the business had changed in the last seven years.

Mr. Perfetti stated no, there may have been ebbs and flows but it has been constant.

Mr. Lewis asked if the rodent issue was resolved.

Mr. Perfetti stated yes, immediately.

Mr. Manahan asked if the definition of Associated Retail described the use of the property.

Mr. Perfetti stated the MDR district does not currently allow any retail.

Mr. Wyman asked for clarification on the e-mail referring to an easement for the kennel.

Mr. Perfetti stated over the years of dealing with the use they have attempted communication, at one point they attempted to purchase a piece of land to straighten out the lot line. They could not do that due to the non-conforming sizes of each lot. As a result an "exclusive use easement" was suggested, which isn't possible as Mary needs the area for her business.

Mr. Wyman clarified that there was no transaction or money.

Mr. Perfetti stated correct.

Mr. Black asked Mr. Perfetti how he knew that people were customers.

Mr. Perfetti stated he can see people walk away with puppies; and based on the sign, internet website, and newspaper articles.

Mr. Wyman asked for public testimony that was neither for nor against, but on a neutral basis.

Mr. Chuck Burnie, Animal Control Officer clarified that the Police Department had one barking dog call on 7/4/10 at 11:10 a.m. it does not indicate where the dog was located, upon investigation the Police

Officer couldn't find a barking dog and the report was closed. Mr. Bernie explained the process of dog licensing. Mrs. Wood was licensing her dogs on an annual basis, but from year to year as indicated; she would change dogs. The three dogs she licensed last year may not be the same three dogs she has this year. What would happen is one of the dogs in the Town's record would show as not re-licensed; part of his job is to knock on doors and check on dogs that haven't been re-licensed. He suggested that Ms. Wood get a kennel license issued by the Town through the State which she was eligible for because the dogs she had fit the description of what State law allows for kennel licenses. That would allow her to change dogs during the course of the year as long as she didn't exceed ten dogs per kennel license. So if she had four dogs in January and two went off to boarding homes and she brought two more dogs in they could be added to the kennel license.

Mr. Black asked if the ten dogs is an aggregate throughout the year or ten at one time.

Mr. Burnie stated correct, not to exceed ten dogs. The owner of the dogs provides the rabies information and name of dogs to the Town Clerk; if the dogs are switched out during the year they provide the updated information to the Town.

Mr. Black asked what criteria the Town Clerk uses to issue kennel licenses.

Mr. Burnie stated the Town Clerk issues a kennel license based on State Statute for licensing of dogs, such as all dogs six months or older must be licensed in the municipality where they reside. The Town Clerk does not review municipal ordinances or restrictions regarding number of dogs.

The public portion of the meeting was closed.

Mr. Wyman asked Ms. Dickson Wood to return to the podium to answer questions.

Mr. Black stated there was some testimony stating you had reliance on Town Communications giving indication you were in compliance.

Ms. Dickinson Wood stated the town license issued in 2006.

Mr. Black asked when she first started selling dogs at her property.

Ms. Dickinson Wood stated she had a litter her first year, and sent two dogs down to George for field training.

Mr. Black asked when the website started.

Ms. Dickinson Wood stated in 2006.

Mr. Black asked when she first had more than three dogs at the residence.

Ms. Dickinson Wood stated always, she had five dogs when she moved to Town; for sixteen years she has had between three to five dogs at her house.

Mr. Black asked in 2001 from the minutes at the special exception hearing you stated you would not be selling dogs.

Ms. Dickinson Wood stated not for the rest of the year, it would be a year or longer before there would be another litter. I wasn't asked if there would be future puppy sales.

Mr. Black stated it also says there won't be dog training at the premises.

Ms. Dickinson Wood stated she does not conduct dog training at the house. I had sales prior to going before the Board of Appeals; I had already had a litter of pups that year.

Mr. Black asked why she answered no in 2001.

Ms. Dickinson Wood stated because there was not going to be any more puppy sales that year, and depending on when the girls came back from Georgia it might be a year or two.

Mr. Black asked if the question was referring to only the remainder of the year.

Ms. Dickinson Wood stated she didn't have another litter until a year and a half or two years later.

Mr. Black asked if anything occurred between 2001 and 2006 in obtaining a kennel license that would lead her to believe she could sell dogs at the premises.

Ms. Dickinson Wood stated there wasn't anything that said I couldn't breed the family dog; anyone can breed the family dog.

Ms. Dickinson Wood stated her town license is to breed, show, and exhibit.

Mr. Black asked if there were any communications aside from the municipal kennel license issued in 2006 that led you to believe you could operate this business.

Mr. Wolf clarified to Ms. Wood; he is asking if there was any other communication from the Town.

Ms. Dickinson Wood stated no, other than Debbie Flanagan recommending a Kennel License. The Town has known that I raise dogs and have pet therapy dogs.

Mr. Black asked who at the Town office was aware of her business.

Ms. Dickinson Wood stated it was not a secret. She was involved in the pink tulip project.

Mr. Wyman asked what methodology can we use to evaluate how many dogs are coming and going, how many were born, how many sold, of the ones that were sold how many were under neuter / spay and how many under the boarding contract. In 2009 you wrote that seventeen puppies were going out this week, so he is guessing that in 2009 that was not the only litter. These champion dogs are all AKC registered, do you register them all.

Ms. Dickinson Wood stated no, as she said before she holds the registration until she receives proof of neuter / spay. She doesn't let anyone breed.

Mr. Wyman asked can we document how many dogs are coming and going.

Ms. Dickinson Wood stated she has four dogs that live in the house.

Mr. Wyman stated he is trying to determine the number of dogs. Do you know the number of dogs sold? You have contracts; therefore there must be a record.

Mr. Wolf stated prior testimony was given that there are only 10 boarding contracts.

Mr. Wyman asked if that were total since 2001.

Ms. Dickinson Wood stated the dogs rotate and then they spay or neuter; and there is another dog to replace it.

Mr. Copp asked if she were trying to say there were only ten in existence currently, but there may be twenty or fifty that have been cancelled.

Mr. Martin asked if there was a way with what you have for records to find out how many dogs you have sold, and how many you have had on boarding contracts. Are you telling us there is no way to know the numbers, or have you just not figured it out?

Ms. Dickinson Wood stated after she files the litter information it is placed in the cabinet until they send the neuter / spay certificate.

Mr. Wyman asked Ms. Dickinson Wood if she could go through her records and determine how many dogs were sold, or under contract in 2009.

Ms. Dickinson Wood stated yes.

Mr. Black asked if she had seen the spread sheet provided by Mr. Perfetti; stating there are some notations on there that say for instance confirmed 12 dogs in kennel; was there ever any time when there might have been 12 dogs in the kennels.

Ms. Dickinson Wood stated they were probably puppies under six months or they might be dogs that are brought in for health clinics. She has four dogs in her kennel for health clinic being held on Sunday.

Mr. Black asked the definition of a health clinic.

Ms. Dickinson Wood stated she has a radiologist and ophthalmologist vet that are coming on Sunday to Paws and Play Daycare in North Yarmouth. These dogs stay at my house until after their exams.

Mr. Black asked why they were staying at her house.

Ms. Dickinson Wood stated because she is transporting the dogs to the clinic.

Mr. Black asked who owns the dogs.

Ms. Dickinson Wood stated she had two back from shows in Canada. When they are done she will take them back to people's homes.

Mr. Black asked if these were dogs she owned, under contract or other people's dogs.

Ms. Dickinson Wood stated these are dogs under contract.

Mr. Black stated there is a line that says at least 8 dogs with four puppies, has there ever been a time when there were 8 dogs.

Ms. Dickinson Wood stated no, not eight dogs they were probably pups.

Mr. Black asked when you say pups how old are they.

Ms. Dickinson Wood stated probably pups two to four months old, under six months, not licensed and haven't had their rabies. She had one litter out there.

Mr. Lewis asked what are the most dogs that you would ever have on your property at any given time.

Ms. Dickinson Wood stated she has six small kennels with 24' long runs. She might have two in a kennel. Those are also temporary dogs; she doesn't have any dogs that live in the kennels.

Mr. Lewis clarified that there could be twelve dogs for one night, and asked how often that might happen.

Ms. Dickinson Wood stated it has happened in the past, not often; it might happen if there were dogs for a clinic or dogs coming back from travel or shows. My dogs don't bark, I lock them in at night time, and she is not up at 6:00 or 6:30 a.m. letting dogs out. If you check police logs she has called about dogs barking down the street. She stated she was aware of barking dogs behind Willow Lane. The Perfetti's dog barks all the time, she gave them a bark collar but it was on the porch the next morning. I could also do a log, the minute the Perfetti's are out the door their dog barks constantly. The last dates and times on the spreadsheet haven't happened yet.

Mr. Wyman reviewed the original approval from 2001. Ms. Dickinson Wood stated she is the coordinator for "Garden Angels" for Cumberland, Yarmouth, and Falmouth. She is also designing a butterfly garden for the Cumberland Common gazebo. She has her Master Gardener designation from the University of Maine Co-operative Extension. The original approval did not include the sign for K-9 Golden's, and no sales. Mr. Wyman asked about the wording Private Kennel.

Mr. Longley stated that was open for interpretation, his violation was that there were four dogs in her name. If one has been re-licensed in someone else's name he has no knowledge of it. Part of his violation notice says if you have done something to correct the violation; please notify the Code Officer. He has had no notification of re-registering a dog in another's name.

Mr. Manahan stated we have been here for more than two hours taking testimony on whether Mr. Longley has taken valid enforcement action. For us to micro-manage his enforcement action makes no sense; because things can change tomorrow. It should be a high burden for us to make a decision that the Code Officer is making a mistake in enforcement action. There are three very specific violations cited:

- More than 3-dogs registered at this address.
- Selling dogs from this location; and
- Altered sign

The Board of Appeals is not an enforcement body.

Mr. Manahan moved to deny the interpretation appeal filed by Mary Dickinson Wood of 285 Main Street, Tax Assessor Map U11, Lot 30.

Mr. Copp seconded.

Discussion:

Mr. Manahan stated it is not the Board's place to get into details of the violation; he has not heard evidence showing that Mr. Longley was wrong. I have heard some interpretational issues on whether there may be a change in the registration of one of the dogs, meaning there might not be four registered. The written records still show four, and if we were to accept the verbal evidence that the number has

changed; it is an advisory opinion to Mr. Longley. Another important point is when he issued this was he correct, maybe he is wrong now because the facts have changed. We shouldn't be reversing his Notice of Violation if it was valid at the time of issuance. If the facts have changed the Dickinson Wood's should talk with Mr. Longley.

Mr. Martin stated it is clear the business operation results in wonderful things; which is why he asked the questions earlier. Most of the testimony that was offered on behalf of the applicant doesn't go to the issues we have to deal with. The testimony goes to a lot of heartfelt emotions based on some real good work that has helped people. This real good work could be done from countless other zones where it is allowed. With all due respect to your Counsel he appreciates the arguments but to find this is not a retail operation defies credulity. He agreed the issue was the violation, but has been changed with a change of registration; and there was not a permit for the sign. He doesn't see anything that would convince him that at the time of the Notice it was not correct. He disagrees somewhat that this Body does have some obligation to oversee the actions of the Code Officer, and we are fortunate to have a great Code Officer. He agrees the appeal should be denied.

Mr. Black agreed the issue the Board is looking at is what happened on May 6, 2010 and the factual situation at the time. The facts seem to be not in dispute, there were more than three dogs at the address, and there was sale of dogs and a sign not approved by the Board of Appeals. There was talk of the definition of Private Kennel, is either a business or private kennel. The idea of a private kennel is someone with more than three dogs, with no sale. He feels the law reads you can't have more than three dogs at your residence regardless who owns the dogs. He agreed he didn't see any basis to overrule the Notice of Violation.

Mr. Lewis didn't have anything to add.

Mr. Copp agreed, stating he sat on the Board in 2001 and remembers questions about selling being asked to the applicant and the purpose of the operation. There was not to be selling, she had therapy dogs that would be taken to hospitals for therapy. He can't believe anyone in business in the process of retail sales can't come up with a number of how many dogs have been sold in the last five years. I can tell you how many cars I have sold in the last five years. He stated he saw no reason to disagree with the Code Enforcement Officer.

VOTE ON THE MOTION:

VOTE: UNANIMOUS

Mr. Wyman stated the interpretation appeal has not been accepted.

2. Special Exception: Mary Dickinson Wood requests a Home Occupation of breeding and selling puppies at 285 Main Street, Tax Assessor Map U11, Lot 30 in the Medium Density Residential District (MDR). Alan E. Wolf, Esq. Representative.

Mr. Longley stated he is not in support of this he is not aware that there is a home occupation for retail sales of dogs in our Ordinance. He had that discussion with Mr. Wolf's co-counsel prior to this meeting.

Mr. Wyman stated that a special exception is neither special nor an exception it is tantamount to a permitted use in the zoning code. Essentially the testimony under this statute requires that the Board find that the petitioners' application meets the qualifications of the zoning ordinance. Comparatively if you were asking for a variance it would be up to the applicant to prove to the Board that the data and material will support the request. In this appeal the Board will interpret the Ordinance in reference to the request.

Mr. Wolf stated the applicant is asking for a home occupation for breeding and selling puppies as a special exception. He stated in 2001 Ms. Dickinson Wood went to the Board for a sign, not for approval of Pet Therapy. She went before the Board because the Town told her if she wanted a sign she would need a home occupation. The motion was not for Pet Therapy, the issue came about because the Town said if you want a sign it is a home occupation go to the Board of Appeals. Mr. Wolf also clarified the proposal to purchase the land was not accurate. The next door neighbor (Mr. Perfetti) tried to buy the land; the agreement fell apart. In August 2009 the neighbors (Perfetti's) inquired again about purchasing the land. Mr. Wolf continued stating there is a case in the State of Maine: Tuscan vs. Town of Harpswell that talks about a kennel being a home occupation. We think it is allowed and is a home occupation. In 2001 the Town of Cumberland told the applicant to get a home occupation; the applicant has always sold dogs.

Mr. Manahan stated in 2001 the Town stated you need a home occupation for the sign for the pet therapy.

Mr. Wolf stated he didn't mean to indicate that the Town in 2001 stated a kennel was allowed, a home occupation is clearly allowed. Mr. Wolf stated he is still concerned, if we meet the requirements home occupations are allowed in this zone. There has been plenty of discussion this evening regarding the requirements. Mr. Wolf started to review the special exception standards.

Mr. Manahan interrupted and stated he is assuming that a kennel would not be a home occupation under Cumberland's Ordinances because it is separately defined as a permitted use. The use is defined as a permitted use in other zones, but not the MDR zone.

Mr. Wolf stated he is not saying this is a kennel. Home Occupations need to be accessory to residential use, incidental and secondary and not change the character of the dwelling. Examples given are arts and crafts, dressmaking, bed and breakfast; and we would argue that selling puppies is the same.

Mr. Manahan clarified that the applicant was asking for permission to breed dogs and sell puppies.

Mr. Wolf stated this is a home occupation; the same as making bird houses in her basement. Would it be different if she were giving away puppies and selling consulting services? Puppies are not constantly for sale at the house.

Mr. Black stated presumably the case went to the law court because someone appealed the decision granting that home occupation. And the law court presumably said the Town did not abuse its discretion when it interpreted the home occupation to include a kennel. It is not saying as a matter of law a home occupation includes a kennel.

Mr. Wolf stated correct. Again, we are saying this is no different than arts and craft, or a dressmaker, this is a hobby that is now a business. Does she sell puppies, yes; does she make money, sure. Is it 24-7 as you heard, no.

Mr. Wyman stated if the dogs have other owners and come back to stay overnight and go to North Yarmouth for a health screening, then returning they are boarding. Is that not a kennel, we are not just breeding and selling puppies there are extra businesses going on.

Mr. Wolf stated the other business is the boarding contracts, I wouldn't call that a kennel.

Mr. Black asked if there was any way to conduct this activity and have no more than three dogs over six months on the property.

Mr. Wolf stated he didn't have the answer.

Mr. Black said if the Board granted a special exception for breeding dogs with the restriction that there be no more than three dogs over the age of six months on the property at any one time would that be acceptable.

Mr. Wolf stated it is not possible, perhaps Ms. Dickinson Wood could explain why. Mr. Wolf asked the difference with the person that has six dogs at their house and sells puppies.

Mr. Black stated they can't do that activity in the MDR, which is the Ordinance limitation.

Mr. Manahan stated he struggles with the single ownership language.

Mr. Black stated he thinks the intent is to prevent more than three dogs at a residence.

The Board discussed the language limiting three dogs in one ownership.

Mr. Martin suggested looking at the definition of home occupation prior to reviewing the special exception testimony. He cannot imagine what testimony could convince him that breeding and selling dogs is akin to being a dressmaker in your basement. The scale of this operation seems fairly significant. This business seems categorically different.

Mr. Manahan stated the test for whether it is a home occupation it has to be accessory to a residential use; and incidental and secondary to the residential use of the dwelling unit. We would need to be convinced this operation is incidental and secondary and does not change the character of the dwelling.

Mr. Wolf stated the question is which part of what Ms. Wood does is the home occupation; selling dogs, or selling of dressmaking, crafts, etc., they are all incidental to the use of the house. The business is the sale of puppies that is a small part of that house.

Mr. Manahan stated sales don't have to be out of the house, a home occupation does not have to be retail sales out of the house. As an example arts and crafts may be created at home and sold at craft fairs.

Mr. Wolf stated the reason we are here is because the business is the selling of dogs. She lives in the house, they breed the dogs, but the actual sale that brings people in is to purchase puppies. This is a residence and the dogs are a small part of the residence, no different than a baking company.

Mr. Black stated he doesn't disagree with that part of the business, perhaps if the dogs were located in North Yarmouth and the sale was conducted in the kitchen, with the website that might be something different. The presence of the dogs goes over the limit allowed in the MDR zone.

Mr. Lewis asked if the kennel was part of the house.

Mr. Brian Wood stated the structure was pre-existing when they purchased the property, it was a shed. This house was a carnation farm and was a commercial building a hundred years ago. The garage is not attached to the house it is a separate structure. The shed has not been structurally changed. The puppies are sold from within the house where they live, people come into their sunroom and kitchen to sign contracts and look at puppies.

Mr. Lewis asked if there were exterior dog runs.

Mr. Wood stated yes, they are 24' long with cement; there are six stalls with six dog runs. They had five dogs when they purchased the property.

Mr. Wolf stated the zoning ordinance states an accessory and secondary use doesn't change the character of the dwelling. There has been one complaint in sixteen years. The fire station is directly behind the house, this use is no different than baking cookies.

Mr. Manahan stated he wasn't sure this qualified and met the standards stated in 603.2.3.4.5 it is different than other home occupations.

Mr. Wolf stated the houses are very close if there were baking odors or music it wouldn't constitute a nuisance. The Board heard testimony regarding barking and lots of testimony that the dogs didn't bark.

Mr. Wyman stated that most of the public testimony was from people who were not residents.

Mr. Wolf stated the fire station is close and staffed with town employees and there are no complaints.

The Board discussed whether the use complied with the Ordinance definition of a home occupation.

Mr. Manahan asked for clarification on what the applicant was asking for; is there a more detailed business plan or are they requesting to continue only what have historically been done in the past.

Ms. Dickinson Wood stated there is nothing new.

Mr. Wolf stated the applicant could come back, they are asking for a home occupation to sell puppies, the applicant can draw up a plan, and a site visit could be conducted if helpful.

Mr. Wyman stated there are more questions than answers; we don't know the number of litters etc., if the Board votes down the request the applicant can't come back before the Board for 12 months, there is also the option of withdrawing the request and re-submitting or asking the Board to table.

Mr. Copp stated you have said there are four or five dogs how many female dogs are your ownership and how many under contract.

Mr. Wolf stated the applicant would be glad to table and come back with a more complete application packet.

Mr. Martin stated he is having a hard time believing this is a home occupation; he is not criticizing the business, there is no question it does fine things. He does not know what the applicant could present to change his mind.

Mr. Wolf stated they would be happy to table and provide more information.

Mr. Manahan agreed with Mr. Martin if it were possible to structure an application to show a less intensive use it might meet the home occupation criteria.

Mr. Copp agreed with Mr. Martin he doesn't see how this operation fits into the district.

Mr. Black agreed he would have difficulty approving tonight, the key issue is the intensity of use and the number of dogs. The Ordinance does allow three dogs and puppies less than six months of age. Mr. Black stated he is impressed by the quality of dogs, but concerned about the location.

Mr. Wolf stated they could work on an application that is more structured.

Mr. Longley stated this complicates where to go tomorrow, are they allowed to continue based on appeal.

Mr. Black stated the appeal was denied.

Mr. Manahan stated it is highly unlikely they would approve the current operation as a home occupation, perhaps if they propose something different.

Mr. Martin asked if there were any enforcement issues.

Mr. Wolf stated the only thing not taken care of in the citation is sales.

Mr. Longley offered counsel that perhaps sales from another location might be a solution.

Mr. Manahan stated if they deny the application as configured they can come back next month if they have a different request.

Mr. Black discussed tabling for a month and asked if it would be prudent to hear testimony from the people present.

Mr. Wyman opened the public portion of the meeting asking for only new information from people that might not be available next month.

Ms. Jennifer Mason of Harrison stated she has raised Golden's since 1982 and started in Michigan. She has lived in Gorham 16 years. If Gorham had the same rule of no more than three dogs in one ownership she would be compliant with her five or six dogs. Two of the dogs are registered in her daughter's name. In addition her son has two pit bulls registered in his name; she is compliant with the wording of the Ordinance.

Mr. Wyman asked for testimony in favor of the application:

Mrs. Jennifer Mason stated this business does not change the character of the house, it is a family dwelling.

There was no neutral testimony.

Mr. Wyman asked for testimony in opposition.

Mr. Mike Perfetti stated he has only filed one complaint; he has been patient and tried to work out any differences between neighbors. His property alone borders the Wood's property, in the front is the monument, and the back is the fire station and the other side is Tuttle Road. This same operation has been going on for sixteen years. A home occupation as defined is allowed in all zones. It is clear by the website that they are selling puppies and offering stud services. The use is more intense than a home occupation. Animal husbandry is allowed in four other zones in town, but neither kennels nor animal husbandry is allowed in the MDR zone. Mr. Perfetti stated if we presume this is a home occupation as stated in Section 603.2.7.1 of the Ordinance states "*sound inherently and recurrently generated shall not exceed a maximum of 60 decibels at lot boundaries, excepting air raid sirens and similar warning devices*" Mr. Perfetti quoted a study "Temple Grand Animal Behavioral Scientist" stating sound levels in animals exceed 100 decibels. He contended that 75 decibels is loud, 94 decibels would be a subway train; 110

decibels is similar to a jack hammer, and individual dogs can exceed over 100 decibels which exceed OSHA limits. The location of the runs allows for constant stimulation and may increase barking. Mr. Perfetti continued stating he didn't feel the application met the special exception standards. Respectfully stating there are thousands of acres and hundreds of properties this that this special exception might work, but not on non-conforming small lots; it is simply incompatible in all ways. He asked that the Board please reject the request and allow him to enjoy all his property has to offer.

The public portion of the meeting was closed.

The Board discussed the merits of this application qualifying as a home occupation.

Mr. Wolf stated they can submit a more complete application next month, and stated there is a law court case allowing a kennel as an accessory use. Mr. Wolf again stated this is incidental to the dwelling use and does not change the character of the dwelling. He would be willing to withdraw the application or table and bring back more information. His client wants to be a good neighbor.

The Board discussed whether or not to table the application.

Mr. Wood stated this is a serious matter the Board is discussing their livelihoods.

Mr. Wyman assured Mr. Wood the Board takes their job very seriously, as evidenced by the great amount of deliberation.

Mr. Martin moved to deny the request of Mary Dickinson Wood for a home occupation of breeding dogs and selling puppies on the basis that testimony presented the use does not meet the definition of a Home Occupation that the use is incidental and secondary to the residual use of the dwelling at 285 Main Street, Tax Assessor Map U11, Lot 30.

Mr. Copp seconded.

VOTE: Unanimous

Administrative Matters:

1. Minutes of October 8, 2010

Mr. Manahan moved to approve the minutes of October 8, 2010.

Mr. Martin seconded.

VOTE: 5 in favor (Martin, Lewis,
Manahan, Copp)
1 abstain (Black)

2. Minutes of March 11, 2010

Mr. Black moved to approve the minutes of March 11, 2010.

Mr. Copp seconded.

VOTE: Unanimous

Adjournment:

Mr. Manahan moved to adjourn at 11:35 p.m.

Mr. Martin seconded.

VOTE: Unanimous

The meeting was adjourned at 11:35 p.m.

A TRUE COPY ATTEST:

R. Scott Wyman, Board Chair

Pamela Bosarge, Board Clerk