



City of Olathe

City Planning Division

MINUTES**Planning Commission Meeting: January 14, 2019**

Application:	<u>SU18-0005</u> Request for a Special Use Permit to allow more than 4 animals (dogs) at one household
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Zachary Moore, Planner II, appeared before the Planning Commission, summarizing this request for a special use permit to keep more than four animals at one household at 1512 East Frontier Lane. Mr. Moore noted that the property consists of two residential lots and one household. This item was continued from the July 23, 2018, Planning Commission hearing because the neighborhood notices were not sent out appropriately. A neighborhood meeting was held on July 23, 2018 and attended by 13 citizens. Topics of discussion included waste produced by the animals, relationship between the owners and dogs, the ongoing court case, and barking dogs. There are no new buildings proposed for this site.

Mr. Moore stated that this special use permit is for the keeping of 10 dogs on the site. During staff's research, it was discovered that the breeding and selling of dogs is occurring on site, which is in violation of the City's UDO. Since 2007, the City of Olathe Animal Control has logged seven different reports and issued 11 citations regarding the dogs kept on this property. Citations include four "Over the Limit" citations, which began in 2014. At that time, the applicant was made aware of the special use permit process. In August 2017, the property owner was found guilty on five of the charges. The City judge is waiting for a decision on this special use permit before assessing fines for those charges. Also, based on reports from Animal Control and correspondence from neighbors, staff finds that issues of public health and safety related to this application do exist, and therefore do not believe this request is appropriate for this location. Staff recommends denial of this special use permit request. Mr. Moore was available for questions.

Comm. Fry asked what happens to the dogs that are currently on the property if this is denied. **Mr. Moore** responded that there would be additional inspections conducted by Animal Control, and should more citations be issued, the City judge may ask that the property owners remove the dogs.

Chair Vakas opened the public hearing and asked the applicant to come forward. **Tracie Alexander and Roy Ingelse**, 1512 East Frontier Lane, approached the podium. **Ms. Alexander** said they just learned tonight that what they were doing was illegal. Also, she said that they have gone to court and proven a majority of the citations could not be substantiated. She stated that she and Mr. Ingelse have dozens of videos on their phones proving that the dogs barking in their neighborhood are not their dogs. She said Animal Control has written tickets to them when their dogs were not even outside. She is asking to keep the same number of dogs that she has always had. She understands that people don't want to hear dogs bark and brings them inside immediately when they start barking. She said an Animal Control officer told her he will make sure she does not get a special use permit. She offered to show the videos to commission members. She said she owns her dogs and her dogs are not foster dogs.

Comm. Nelson asked how many dogs are in the house now. **Ms. Alexander** said they have seven dogs. She noted that they have two lots and it was her understanding that four dogs on each lot were allowed.

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Betty Burch, 1612 East Sleepy Hollow Drive, approached the podium. She is concerned that the applicants are running a business out of their home. **Chair Vakas** said he has seen the website and understands her comments.

Richard Leonard, 1504 Frontier Lane, approached the podium. His property is directly adjacent to the subject property. He believes Ms. Alexander is misrepresenting information when she said a board fell out of the fence. He said her dog ripped the board off the fence and came after him in the back yard. Mr. Leonard called Ms. Alexander's husband to come home and retrieve the animals. He does not believe Ms. Alexander takes responsibility for all of her animals. She said when he first met Ms. Alexander two years ago, she said she had a special use permit for her dogs, which was untrue.

Chair Vakas asked someone from Animal Control to come forward. **James Brackett**, Animal Control Officer, City of Olathe, approached the podium. Mr. Brackett said he has personally issued two citations for "Over the Limit," one in 2015 and one in 2017. He said that in 2014, Ms. Alexander was told what she needed to do to get a special use permit. She has been issued various tickets and ordinances and limits have been explained to her. He said Ms. Alexander has been ticketed for various infractions, including dogs not on a leash or not under voice control. He further summarized his office's interactions with Ms. Alexander and the dogs on her property. Chair Vakas noted that there is a history of legitimate problems. Mr. Brackett agreed. Chair Vakas asked if anyone has been bitten by any of these dogs. Mr. Brackett said that back in 2011, there was a situation with a mother with puppies, and a little girl bent over to pet them. He said that is not something they would issue a citation for and they do not consider that to be a problem. He said that although a bite did occur, the circumstances did not warrant a citation.

Chair Vakas asked if there continue to be a number of open violations pending adjudication in municipal court. **Mr. Brackett** said that that is true. **Comm. Corcoran** asked about the limit of four dogs per lot. Mr. Brackett noted that one lot is empty and the other has a residence, and that the ordinance reads "per residential household," meaning there can only be four animals. **Comm. Freeman** asked if that limit applies to any lot size; Mr. Brackett said that it does.

There were no further questions; **Chair Vakas** called for a motion to close the public hearing.

Motion by Comm. Freeman, seconded by Comm. Nelson, to close the public hearing.

Motion passed 5-0.

Comm. Freeman asked if no commercial in a residential area is a change in City ordinance. **Aimee Nassif, Chief Planning and Development Officer**, responded that there has not been a change in that ordinance and commercial uses are not allowed in residential areas. She said the applicant has been informed that commercial activity is not permitted, even with a special use permit. **Chair Vakas** asked if this means that the applicant is operating in contravention to the UDO; Ms. Nassif said that is correct.

Comm. Freeman noted that the special use permit would not allow a commercial use. Therefore, based on staff's recommendations, he see does not see any way this could be approved. **Chair Vakas** said the court matters need to be settled and asked if the applicant could come back after that and seek approval. **Mr. Moore** responded that if the Planning Commission recommended denial tonight, the matter would go to City Council for final consideration on February 5th. Should City Council recommend denial, the applicant could file another special use permit request after the court matters get sorted out. **Ms. Nassif** advised there is a 12-month waiting period after City Council makes a decision before a new application can be made.

Motion by Comm. Freeman, seconded by Comm. Corcoran, to recommend denial of SU18-0005, for the following reasons:

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- i. The activity occurring on site is a commercial use, not permitted in this residential district.
- ii. The amount of and nature of the outstanding public health and safety violations on the site and citations issued by the City of Olathe.
- iii. The recommendation of Olathe Animal Control.

Aye: Freeman, Nelson, Fry, Corcoran, Vakas (5)

No: (0)

Motion to deny was approved 5-0.