



Stanly County Board of Adjustment
March 15, 2022- Meeting Minutes

Call to Order Chair Cindy Fish called the meeting to order on March 15, 2022 at 7:30 p.m. in the Stanly County Managers meeting room at 1000 N. First Street, Albemarle, North Carolina. Bob Remsburg served as Clerk of the meeting.

Stanly County Board of Adjustment Members attending

Billy Franklin Lee, Richard Cosgrove, Michael Fleming, Cindy Fish, Rick Johnson, Michael Efird

Absent: Devron Furr & Brenda Farmer (both were excused)

Stanly County Planning Staff Attending Bob Remsburg, Planning Director; Bailey Emrich, Planner 2

Others Present: Many community members were present to hear this case. (Refer to the sign in sheets in the meeting minutes binder for the list of names).

Chair Fish stated "We will now review the minutes of our previous meeting which was held on February 23, 2022. Do I have a motion to approve the minutes?"

Motion: Richard Cosgrove

Second: Michael Fleming

Approved: 6-0

Chair Fish stated the following:

Tonight's case is Item #SUP_22-02 a request by Josh and Rebecca Gibson for a Special Use Permit to operate a commercial dog kennel at 1101 Polk Ford Road, Stanfield which is zoned, RA – Residential Agricultural. The evidentiary hearing on this matter is quasi-judicial in nature and will be conducted in accordance with special due process safeguards. All persons who wish to testify in this case should have signed up on the Attendee Sign-In Sheet for this hearing. If you have not signed and wish to speak please sign now. Persons wishing to speak should have standing in the case. Those with standing are generally those living nearby or somehow directly affected by the proposed uses. All those audience members and staff wishing to testify please proceed to the front of the room to be sworn in.

The Stanly County Board of Adjustment is a quasi-judicial board. Therefore, the North Carolina State Statutes, requires that the board base its decisions only on testimony given under oath. Any person who, while under oath during this proceeding, willfully swears falsely, is guilty of a Class 1 misdemeanor. If anyone refuses to be sworn, your statements will not be treated as evidence on which to base a decision but merely as arguments.

County Staff and Community members came forward to be sworn under oath.

Before opening the hearing, I'd like to give Board members a chance to reveal any possible conflicts that you may have and withdraw from these proceedings if necessary.

There were no conflicts.

Any Board members who have any information or special knowledge about the case that may not come out at the hearing tonight, please describe that information for the record so that interested persons will know and can respond if needed.

No board member came forward.

The Order of Business for this hearing will be as follows, first we will hear from the Planning Staff, then we will hear from the Applicant and their Witnesses, then we will hear from the Opponents to the request. Parties may cross-examine witnesses after the witness testifies when questions are called for. If you want the Board to see written evidence such as reports and maps or exhibits, the witness who is familiar with the evidence should ask that it be introduced during or at the end of his/her testimony. The Board cannot accept reports from persons who are not here to testify. Attorneys who speak should not give factual testimony but may summarize their client's case. Before you begin your testimony, please clearly identify yourself for the record.

I now open the evidentiary hearing on Item #SUP 22-02 and ask for testimony from the County staff.

Bob Remsburg shared the following:

I will go ahead and submit to you a couple of revisions to the memorandum that was initially sent to you in your packets.

Josh and Rebecca Gibson request a Special Use Permit to allow for the use of a Dog Kennel for their property located at 1101 Polk Ford Road, Stanfield. This property is located in the cul-de-sac of a dead end road. This parcel is located in the RA - Residential Agricultural Zoning District which does require a Special Use Permit to operate a "Commercial Dog Kennel or facilities for raising dogs and cats..." per section 601.2 of the Stanly County Zoning Ordinance. The facility must meet two regulations listed which are (a). The facilities shall be maintained in a neat and sanitary condition and (b.) Open Kennels shall be located no closer than 50 feet to any adjoining property line. NCDOT traffic count for Polk Ford Road was 970 vehicles per day near the intersection with Renee Ford Road. This property is at the end of Polk Ford Road which is a private right-of-way for approximately ½ mile before the cul-de-sac. Based on federal tax data submitted by the property owner, the property is a bona fide farm per NCGS160D-903.

The Gibson property is 10.56 acres which backs up to the Rocky River and they have acquired the property directly next to them containing 5.01 acres for a total of 15.57 acres. The Gibsons do currently reside on this property. The site plan does indicate that they have a barn as well as a designated area for the kennels. The Board of Adjustment does have the authority to set certain conditions or strengthen the conditions already on the property as long as the property owners agree. The kennel has been in operation for several years as it grew into a business after the Gibsons acquired the original parcel in 2015.

There are four standards that must all be found true in order to approve the Special Use Permit.

Standard #1 - That the project will not materially endanger public health or safety; if located where proposed, and if developed and operated according to the plan submitted

Standard #2 - That the project will not substantially injure the value of adjoining property.

Standard #3 - That the project will be in harmony with or compatible with its neighbors and is generally consistent with the latest Stanly County Land-Use Plan.

Standard #4 - That the project meets all other required conditions and specifications.

Mr. Remsburg submitted definitions to the board further defining a kennel and bona fide farm. Mr. Remsburg also referred to state statute to further define a bona fide farm. Mr. Remsburg went through the slideshow to show images and maps of the Gibson property.

Chair Fish asked "Are there any questions from the Board or parties present regarding the staff report?"

There were none.

Chair Fish stated "If there are no objections, the staff report and related documents are admitted into evidence for this case."

Chair Fish stated "We will now hear from the applicant and other proponents of the request. If there are attorneys or other representatives who will give a general summary of the client's position, we'd like you to go first."

Attorney David Beaver, representing the Gibsons shared the following:

I am representing the Gibsons in this matter. I would suggest that before we discuss the four elements of the Special Use Permit that you pay particular attention to what Mr. Remsburg has just given you. In that this land is zoned Residential Agricultural and he has given you definitions of a farm pursuant to North Carolina General Statutes 106 581.1 item 3, agriculture is defined as the raising, management and care or training of livestock including horses, bees, poultry and other animals for individual and public use, consumption and marketing. On this particular farm there are cows, ducks, pigs, sheep, and goats. I think clearly this is a farm. If in fact this is a farm and where she lives is zoned properly I don't think we have reached an issue of if she needs a Special Use Permit. She has been there for seven years under this exact definition conducting the same activities. The Special Use Permit would pre-suppose that we are talking about something that is not within the confines of the correct zoning district. If she meets the

definition of agricultural and a farm, I think that is conclusive. I will respectfully ask that a vote be taken on that either up or down.

Chair Fish requested a five minute recess to gather legal guidance.

Chair Fish stated "Mr. Beaver, as for the request of a vote, I would like to propose to the board that someone entertain a motion that we see additional evidence to support this claim as an operating farm. There are four standards that are used to support that notion of a farm and so far we have not seen any of that evidence."

Motion: Michael Efird

Second: Michael Fleming

Approved :6-0

Mr. Beaver stated "It gives you a series of things but anyone of which is what you need, you don't need all four."

Mr. Beaver provided the board with the Gibsons Schedule F forms from their federal tax returns for the past several years.

Mr Beaver stated "This is one of the items that proves it is a farm. You do not have to produce the last years but they have been on the property seven years and continue to have them."

Chair Fish stated "I would like to entertain a motion that we also be provided additional information under NCGS 106-581.1 that definition of agriculture includes that the dogs in this kennel would qualify for agricultural use."

Motion: Richard Cosgrove

Second: Michael Fleming

Approved:6-0

Chair Fish stated "I would like to note that this schedule F states the primary activity is a sheep and horse farm so we need to address that."

Mr. Beaver stated "To summarize what Ms. Gibson will tell you, they have Border Collies. They are not raised to produce puppies. It is not a puppy mill. They have a business but it is not conducted here. They go off site and even out of state. The dogs are nurtured and trained with sheep. Some of these are pets. They have had the same number all the time. To the extent of the definition of kennel is housing, that is true, and the extent at which they are fed and cared for is true but it is not a puppy mill. They replace the ones they need to replace. They may sell an occasional puppy but that is not a business. The operation is Fly Away Geese. They get orders all around the country at airports and other large businesses where geese or ducks are a nuisance or problem. They go for several weeks at a time and they run the geese off. They have to stay long enough to be able to run the geese out. That particular operation is conducted off site. All she does here is house them. I will let her describe that a little more thoroughly."

Rebecca Gibson shared the following:

I will tell you that dog and kennel regulations in the United States are all handled by the USDA, they manage and regulate dog kennels. After World War 2 the USDA put out initiatives to farmers to produce dogs as supplemental income to crops. There are many instances where dogs are covered under livestock. Not to mention many of the dogs on the farm and Fly Away Geese are working border collies. By North Carolina legislation and the statute mentioned earlier, it specifically says "and other animals" which are not defined for "individual and public use", our dogs are working for public use. That is all they do. They go out and provide a service for the public. It services all off of the farm. They only work livestock on the farm. I do not have geese on the farm that is against federal law. Even the services we do off of the farm are recommended and regulated by USDA. I have their mission statement but they are responsible for managing wildlife conflict which is what Fly Away Geese does with the public and Canada Geese. USDA wildlife services recommends the work of Border Collies for Canada Geese. We have been doing this since the day we moved here 7 years ago. We have been doing wildlife management services and working with border collies since the day we got here. The schedule F only allows you to pick two types of animals to put in the form. That is why it just says sheep and goats."

Richard Cosgrove stated "Most of us have dogs that we put in kennels when we go on vacation but this does not seem to be the same thing."

Mrs. Gibson stated "No sir we do not take any outside dogs. All of the dogs on that farm belong to me."

Richard Cosgrove asked "When you go to an airport, how many dogs go?"

Mrs. Gibson stated "We currently hold a contract with the Virginia Department of Transportation and I have 27 dogs running 24 hours a day and 7 days a week for the biggest contract that they have ever done. But to answer your question specifically one or two. But right now I have 27 in Virginia. But they are gone for eight months out of the year."

Richard Cosgrove asked "How many dogs are at your kennel today?"

Mrs. Gibson stated "Today there are 22. My husband and I also do sheep dog trials. Those dogs are also there. That is also part of the complication. We have sheepdogs and personal dogs as well."

Rick Johnson asked "Could you give me an average of what would be on the farm at any given time."

Mrs. Gibson stated "Around 25-35."

Richard Cosgrove asked "I have another concern based on what I know about kennels. I put mine in a kennel one time and when I came back there was a lot of barking going on. Are your neighbors concerned about the barking?"

Mrs. Gibson stated " We have been there for seven years, we have had no complaints until October of this year when there was an incident with the neighbor across the street that had nothing to do with the dogs. There has never been a complaint to the county or Sheriff's Department until October of 2021. Again, we have decibel readings that Ms. Pleasant did on 80 different occasions and if you look at the plat map our kennel sits down at a 50 foot elevation difference from the neighbors across the street. Border Collies are not barkers by nature. They move livestock with their eyes and stalk things. We have affidavits from my vet that specifically state that. Our livestock guardian dog will bark but there are coyotes and predators around. We do have two deputies and the zoning enforcement has been out and all have commented on how quiet it is."

Rick Johnson asked "Could you tell me the distance from the kennel to the nearest home ?"

Mrs. Gibson stated "It is 600 and some odd feet across the road. It is approximately 450 feet to the neighbor on the other side."

Chair Fish asked " Has the number of dogs changed?"

Mrs. Gibson stated "No ma'am, it varies but it is never any drastic. Since we started that contract with Virginia DOT two years ago this is our third year we run from February 15 to October 15."

Michael Fleming stated "When your off site dogs come home, how many dogs are there? And are your kennels large enough?"

Mrs. Gibson stated "I never have any more than 40-45 on site but I do have enough kennels for them."

Chair Fish stated "I want to stop with this witness and refer back to Mr. Beaver for his requested vote."

Attorney Jenny Furr stated "It is up to the board Madam Chairwoman , If I understood Mr. Beavers' request from earlier, I think he was asking for you to rule on whether or not the Gibson property would qualify as a bona fide farm. If a property is considered a bona fide farm then the uses specified in 106-581.1-3 would be allowed. A question is whether this is a bona fide farm? If so would the dogs/ dog kennel qualify as other animals for individual and public use and marketing in that statute. Depending on the answers to those questions, if the board chooses to go ahead and rule on those, you may or may not be ruling on the special use permit request. Mr. Beaver and Mr. Sinter are welcome to chime in."

Mr. Beaver stated "Thus far has been there over 7 years conducting the same purpose as they are doing now. We have pictures of the kennels, elevation surveys, and noise meter readings. They will show that they do not bark. They have a guard dog to guard the animals at night and there is night vision photography that shows the coyotes around the property at night. They protect the livestock and run them off. That dog may bark, yes. But as far as constant barking going on all the time, that is not the case. In these notebooks, our vet was going to come but she attended

another meeting. She included an affidavit regarding what is to be true. The Sheriff's Deputies were also going to attend to talk about how quiet it is. You heard the distances we are between the neighbors. At street level it reaches the level of a running washing machine. I don't think when you become a board member and you are trying to use your judicial decision making authority, that does not mean you have to leave your common sense at the front door. They have been there for seven years and doing exactly the same thing and now all of a sudden it becomes a problem. We believe this is a bona fide farm and it does specify other animals. She does meet the general statutes. They control local county ordinances in the case of a diametric opposition between the two you have to go with the state statute. Federal law trumps everything. I think there is a misunderstanding of why we are here. There was a letter that went out and told a lot of these people in this room that we are here to rezone the property and that is false. I think everyone at the county would tell you that. We don't feel like we need to qualify for a special use permit. We meet all the criteria for federal and state qualifications.

Attorney Jim Sinter, representing the Morton family shared the following:

I am here on behalf of Thomas and Peggy Morton, they are adjacent landowners to the Gibsons. First thing that I would like to point out is that the purpose of this hearing is their application for a special use permit. They are the ones who brought us here, not the other way around. So to come in and start the meeting asking you to consider an issue that is not even before you is totally improper. They applied for a Special Use Permit four weeks ago. That was their decision. That is what we are prepared to address. They want to recharacterize their argument. I would ask the board if you are inclined to accept this request that we postpone this meeting for time to review other ordinances that might apply to this. We are here for their application of a Special Use Permit. There has been evidence presented that the dogs are quiet. We are prepared to present evidence to the contrary. Furthermore, they contest that they have been doing this since they bought the property seven years ago, we are ready to show that is not the case. This was a new business seven years ago and it has grown into a very different business than what it was then. I felt compelled to tell you that the reason we are here tonight is for their application of the special use permit and to consider any other issue that would be contrary to the purpose of the meeting."

Mr. Beaver stated "We came forward voluntarily to ask for this. We are here because the county thought that we needed to do that. We disagreed with that. This is the reason we're here because we were instructed to do that. We have done a lot of research and we do not feel like we need to be here. We are responding to a decision brought to us by the county."

Richard Cosgrove asked "So you're saying that you don't think that the Gibsons need a Special Use Permit because they already qualify as a bona fide farm? And it was not the Gibsons that actually came to the county office and said can we have a Special Use Permit."

Mr. Beaver stated "That is exactly correct."

Mrs. Gibson stated "So when the county came out based on the complaint from the Mortons initially. I was told that we might need this permit. When I spoke to someone about that they said wait until you get a definitive answer. Then I get a letter from the county that says if you do

not get a special use permit you have 14 days to cease and desist your business. What was I going to do? I don't think we need one and I do not want one. I think some of these neighbors are here because they received a letter from the Mortons telling them that we were trying to rezone and if they allowed this then it would allow for commercial business in the area. They are concerned if this is allowed then we are going to open a Walmart. We don't need one. We just want to continue doing what we have been doing. This has been in business since 1996 and in 2000, I contracted with every Air Force base on the east coast of the United States. The number of dogs has not grown. We applied because we were told to by the county, not because we wanted to."

Mr. Beaver stated "She said if she, for example, had a large herd of beef cattle and took them off site then that is still farming. Same thing if she had eggs to sell. She takes care of the dogs, monitors their nutrition and their cleanliness. I do not think Fly Away Geese since it is not performed on site, is not a commercial use."

Cindy Fish called for a recess to consult legal counsel.

Billy Franklin Lee stated in order for the board to rule on the farm statute we need to have a staff determination. With that, I would like to make a **motion** that we proceed only with this Special Use Permit hearing tonight."

Second: Rick Johnson

Approved: 6-0

Mr. Beaver asked "Are you going to hold the hearing open at the conclusion of the meeting until you get input from staff to reach a conclusion on the first matter I presented."

Cindy Fish stated "My understanding of it is that we need a decision from the Planning Staff concerning the ruling on Agricultural Use so you will need to go through the staff to get that and if you wish to appeal that then it will come back before the board. Let us start this over again. Mr. Beaver, do you have any additional information you wish to present?"

Mr. Beaver stated "I think you have information before you on a Special Use Permit and the elements were decided by the Courts of North Carolina of what you are to consider and someone who is asking for this type of permit. There are four different findings of fact before you. We are going to take these one at a time and address these. The issue of value is the first one. Larry MacGuire will present on this first finding."

Rebecca Gibson asked for a moment with Mr. Beaver

Mr. Beaver stated "Mrs. Gibson has asked before we spend all of this time, would it be in line to let you get your staff report and see what that decision is going to be. It is possible we do not need this hearing. I will leave that up to Mr. Remsburg and the attorney."

Mr. Remsburg stated "It is the determination of the board that you can continue the hearing to another date or you can proceed with the hearing now."

County Attorney Jenny Furr stated "I believe it is totally a board decision whether you would like to continue the Special Use hearing to a later date to allow the Gibsons to get a staff ruling on the bona fide farm question. Or if you would like to proceed that is totally up to you. Mr. Beaver can make that motion but it is up to you all to rule on that."

Mrs. Gibson stated "I am willing to withdraw my request until I am deemed necessary to have one, I do not want one."

Mr. Remsburg stated "It is entirely up to you (the Board) to continue or not. I would advise Mrs. Gibson not to withdraw yet."

Mrs. Gibson stated "We are on the calendar for April 14th to have a VAD hearing for Ag. status so I believe it would be prudent to wait for that as well."

Mr. Beaver stated "That would give your staff plenty of time to provide a determination and if they deem that it is not a farm use then we will be back here to do this all over again."

Mr. Beaver stated "On the 14th a decision will be made that will potentially make the whole thing moot."

Michael Efird made a motion to continue the hearing until the determination has been made.

Mr. Sinter stated "I only represent the Mortons in this matter. There are plenty of other property owners tonight. I ask that they be heard by the board."

Mr. Remsburg stated "That is up to the board to proceed with the hearing, or to leave it open after hearing from whoever is present. If the petition gets withdrawn it would end all of that. You can hear testimony if you would like or you can stop it now."

Mr. Beaver stated "To do what is suggested here, if we have the Special Use Permit hearing then she goes first and then all of her witnesses go, then all of the others go. You would be doing things out of order."

Chair Fish asked "What is the meeting after the April date?"

Billy Franklin Lee stated "I am on the VAD board and that does not determine whether you are a bona fide farm or not. All that does is alert your neighbors that you are a farm and you are doing farm activity. It does not mean you are a farm or not a farm."

Mr. Beaver stated "I agree with that, but this would be able to be submitted as evidence to support the case from the VAD board."

Cindy Fish stated "I assume Michael's motion would be to move this to the May meeting."

Bob Remsburg stated "If you can set the date at a certain time, it helps with notification."

Cindy Fish stated "I have a motion to keep this meeting and hearing open to continue the hearing to May 10th, do I have a second?"

Second: Rick Johnson

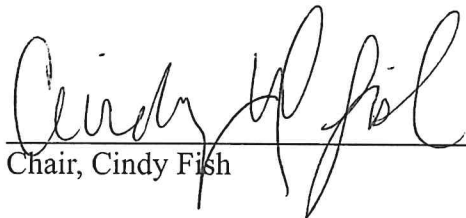
Approved: 5-1

Motion to adjourn: Richard Cosgrove

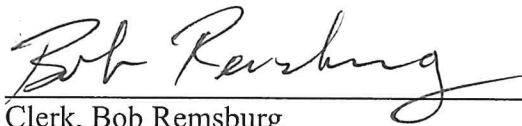
Second: Michael Efird

Approved: 6-0

Adjourned: 8:48 PM

A handwritten signature in cursive script, appearing to read "Cindy Fish", written over a horizontal line.

Chair, Cindy Fish

A handwritten signature in cursive script, appearing to read "Bob Remsburg", written over a horizontal line.

Clerk, Bob Remsburg