

Town of Morse

PO Box 660, Ely, MN 55731

June 13, 2023

Attention: St. Louis County Planning Department

The Town of Morse board passed the following resolution on June 13, 2023.

Whereas, a Conditional Use Permit application has been filed with St. Louis County for parcel 465-0020-03306 by Elizabeth Chapman of 13385 Winton Road; and

Whereas, the Town of Morse Board of Supervisors reviewed the Conditional Use Permit application and found it to be incomplete as to the number of dogs currently on the property and how many additional dogs would be permitted;

Whereas, the Town of Morse board has heard from adjoining and nearby property owners who have all opposed the Conditional Use Permit due to sound impacts from animal noise, the small size of the property and the reduction in values of their property due to a dog kennel being located close by;

Therefore, the Town of Morse board of supervisors requests that the Conditional Use Permit for parcel 465-0020-03306 be rejected and the property owner informed of the restrictions on the number of dogs allowed per Ordinance 62.

The resolution was approved by unanimous vote with Supervisors Terry Soderberg, Bob Berrini and Len Cersine all voting in favor on June 13, 2023.

Nick Wognum, Clerk

Angela Lepak

From: tcooper University of Minnesota <tcooper@umn.edu>
Sent: Thursday, June 15, 2023 3:30 PM
To: Skyler Webb; tcooper University of Minnesota; Pamela J J Davis
Subject: Chapman property on Winton Road

WARNING: External email. Please verify sender before opening attachments or clicking on links.

To: Skyler Webb,

I am writing to protest the number of dogs currently on the property of Elizabeth Champan on Winton Road. We can hear the dogs howling and barking during the evening when on our front porch and when we go to bed. With the need for windows open, the howling dogs keep us awake and we are 1/3 mile from the property. Current Zoning is smll and should not allow the number of dogs currently present on the property. This large dog kennel is destroying the peace and tranquility of our country neighborhood. The neighbors who are closer than I am must even have it worse.

I am sure with this many dogs on site, all our property values are being reduced due to the noise of so many dogs howling and barking. My wife (Pam Davis) and I urge the county to not allow this situation to continue.

Sincerely
Terence H. Cooper and Pamela Davis
2744 Cedar Lake Road
Ely, MN

Terence H. Cooper
Professor Emeritus Soil Science, U of MN
2744 Cedar Lake Road Ely, MN 55731

Phone 651 230 2117

email - tcooper@umn.edu

Angela Lepak

From: Ely Echo <elyecho@aol.com>
Sent: Monday, July 31, 2023 2:00 PM
To: Skyler Webb
Subject: Fw: Sled dogs at 1385 Winton Road

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Here is one of the letters on the CUP.

Nick Wognum, Clerk
Town of Morse
PO Box 660
Ely, MN 55731
218-365-3141

----- Forwarded Message -----

From: Carlin Ryan <carlinryan11@icloud.com>
To: "elyecho@aol.com" <elyecho@aol.com>
Sent: Tuesday, June 13, 2023 at 07:47:53 AM CDT
Subject: Sled dogs at 1385 Winton Road

Hi Nick,

This is Carlin Ryan, my address is 1387 Winton Road and I'm just sending this email to let it be known that I am against County Planning Commission approving a conditional use permit application for 1385 Winton Road.

Thank you for your time.

Sent from my iPhone

Angela Lepak

From: Carlin Ryan <carlinryan11@icloud.com>
Sent: Monday, August 7, 2023 8:54 AM
To: Skyler Webb
Subject: Conditional use permit

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To whom it may concern,

My name is Carlin Ryan and I am the property owner at 1387 Winton Road in Ely, MN. I am writing this email in regards to the conditional use permit for animals that Elizabeth Chapman at 1385 Winton Road has applied for. I would like it to be known that I am against this permit being granted due to amounts of noise that the dogs make nearly everyday during morning, evening, and night time hours. The noise is not only a nuisance while sleeping or relaxing, but I am worried that it may affect property values in the future if/when I decide to sell my own property.

Thank you for allowing me an opportunity to give my opinion.

Sincerely,

Carlin Ryan

Angela Lepak

From: Ely Echo <elyecho@aol.com>
Sent: Monday, July 31, 2023 2:09 PM
To: Skyler Webb
Subject: Fw: Dog Kennel on Winton Rd

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Here's another letter.

Nick Wognum, Clerk
Town of Morse
PO Box 660
Ely, MN 55731
218-365-3141

----- Forwarded Message -----

From: Erin Moravitz <erin.brandau80@gmail.com>
To: Ely Echo <elyecho@aol.com>
Sent: Monday, June 12, 2023 at 06:11:05 PM CDT
Subject: Re: Dog Kennel on Winton Rd

Thank you, Nick.

On Mon, Jun 12, 2023, 9:01 AM Ely Echo <elyecho@aol.com> wrote:

I will make sure the Morse board is aware of your concerns. Thank you.

Nick Wognum, Clerk
Town of Morse
PO Box 660
Ely, MN 55731
218-365-3141

On Monday, June 12, 2023, 07:33:48 AM CDT, Erin Moravitz <erin.brandau80@gmail.com> wrote:

Good morning, Nick

We live at 1400 Winton Rd, Ely, MN 55731. I am writing in regards to the dog kennel that is right by our house. It's my understanding that the owner of this kennel is filing for a new application in order to have more dogs. We are against this happening and hope this does not get approved.

Great if someone wants to have a dog kennel; however, have a dog kennel where you're not surrounded by neighbors and can hear dogs barking constantly in the early morning, mid day, and evenings. It's extremely frustrating and disturbing the peaceful environment of our neighborhood.

Thank you for your consideration.

Regards,
Erin and Pat Moravitz

Angela Lepak

From: Larry Gotchnik <lgotchnik@comcast.net>
Sent: Monday, July 31, 2023 4:03 PM
To: Skyler Webb
Cc: Nick Wognum
Subject: Elizabeth Chapman CUP meeting on 8/10/23

WARNING: External email. Please verify sender before opening attachments or clicking on links.

K

This email is in response to the letter we received dated 7/25/23 as we are a property owner adjacent to the property in question. I was born and raised in Ely and my wife (Bonnie Joy Gotchnik) and I are the 4th consecutive family generation to own our property at 1347 Winton Road. I graduated high school in Ely, then Vermilion Community College, then UMD with a bachelor degree and later a Masters degree. I was a senior vice president for a global corporation before retiring in 2019.

We built our log home at 1347 Winton Road in 2015 and moved back to Ely after my retirement. I am also a member of the Bois Forte Band of Chippewa. As respects Ms. Chapman she acquired her property at 1385 Winton during the fall of 2022. She had someone bulldoze an area relatively close to our common property line where I counted 11 dog houses once the dogs were moved into the kennel area. In addition I understand she has 3 non-sled dogs and has another kennel area just north and a little west of her house.

My wife and I are very much against approval of her CUP application. Ms. Chapman had every opportunity prior to purchasing the property to conduct proper due diligence regarding the County ordinance for domestic dog ownership. I conducted a simple google search and within seconds found ordinance 62. She has also shown a total lack of respect for any of the residents that are residing close to her property regarding the loud noises the dogs make. The noise concern includes her non-sled dogs that she often lets them out in the other kennel and they can bark for hours and she does nothing to stop or minimize the noise. The sled dogs can be very loud at multiple times each day and night with their barking, howling, whining, and the clinking and clanking of their chains as each sled dog is chained to its dog house.

While I have nothing against sled dogs and people that own them they should have a duty and responsibility to live that life style and seek more remote areas to live and keep their dogs. Almost every night since last fall when the dogs were moved in we are awakened by their loud noises. It's been even worse in the summer when we prefer to have the windows open.

My wife and I attended the Town of Morse meeting on 6/13/23 in person and we spoke about our concerns about her CUP. At that meeting the Township board unanimously agreed not to support her CUP request and that is the feedback they provided to the County Planning Commission. In addition several other nearby residents also sent the Township emails with their concerns and disapproval of the CUP application.

I would like to see a sled dog team specific ordinance or amendment be developed having specific minimum acreage requirements (I suggest 40) and minimum distance requirements from any nearby resident (at least 1/2 mile). Something like what I am suggesting could help minimize future potential conflicts.

In closing I ask each member of the County Planning Commission to ask themselves how would they react if their closest neighbor had a large number of sled dogs kenneled close to their common property line and each of you had to tolerate the loud noises they can make multiple times each and every day and night!

My wife and I will be attending the meeting in person and I look forward to meeting each of you and summarizing some of the key points I have made in this email response.

Thanks for your time and consideration,

Larry Gotchnik
Sent from my iPad

5122 Idlewild Street
Duluth, MN 55804
218-341-7470

28 July 2023

To Whom It May Concern:

I am writing regarding the concerns surrounding Beth Chapman's dogs. I have never been to her premises, nor have I met all of her dogs. However, as the Program Director for the MNC-Vermilion Veterinary Technology Program, I have had the opportunity to work with a handful of her dogs that she brought in to assist in teaching labs at the school. Her dogs were very good with the students and appear to be in good health and well cared for. As a program, we very much appreciated having her dogs as a resource for teaching the students in handling and surgery labs.

Please let me know if you have any additional questions or concerns regarding this letter.

Sincerely,

Leslie Clapper-Rentz, DVM

Program Director and Instructor
MNC-Vermilion Veterinary Technology Program

MALKERSON GUNN MARTIN LLP

5353 GAMBLE DRIVE, SUITE 225
MINNEAPOLIS, MINNESOTA 55416
TELEPHONE 612-344-1111
FACSIMILE 612-344-1414

Patrick B. Steinhoff
Attorney at Law

Direct: 612.455.6601
pbs@mgmlp.com

August 3, 2023

Planning Commission
St. Louis County
320 W 2nd Street
Duluth, MN 55802

RE: Elizabeth Chapman CUP Application
1385 Winton Road, Morse Township
Our File No. 3773.001

Dear Member of the Planning Commission:

I represent Elizabeth Chapman, who is applying for a conditional use permit (“CUP”) to keep up to 25 dogs at her property located at 1385 Winton Road in Morse Township (“Property”). I submit this letter on behalf of Ms. Chapman in advance of the public hearing scheduled for her application on August 10, 2023.

Ms. Chapman is in compliance with the County’s zoning ordinance and does not need a CUP to maintain her current number of dogs at the Property. To the extent that a CUP is necessary, Ms. Chapman satisfies all applicable criteria established by the County’s zoning ordinance for the granting of a CUP. For these reasons, I respectfully ask that the Planning Commission vote to approve Ms. Chapman’s application.

I. A CONDITIONAL PERMIT IS NOT REQUIRED HERE.

The Property is 4.3 acres in size. Ms. Chapman currently keeps eighteen dogs at the Property (fourteen outside and four in the house). However, the County staff has instructed Ms. Chapman that she may only keep five dogs at the Property without a CUP. The County staff has instructed Ms. Chapman that she must apply for a CUP in order to maintain her current number of dogs at the Property. However, this is simply incorrect. The County zoning ordinance unambiguously states that a property owner may keep five dogs *per acre*.¹ The number of dogs currently kept by Ms. Chapman at the Property is well beneath this limit.

¹ I note that, at 4.3 acres, the Property is only .2 acres below the threshold at which even the County staff acknowledges that Ms. Chapman may have up to 25 dogs as a matter of right regardless of whether or not one treats the animal unit limitation on a “per acre” requirement (as the text of the ordinance states).

The County zoning ordinance includes a provision that governs the number of “domesticated animals” allowed at properties within the County. See Zoning Ord., § 6.21(A). This provision states that a CUP is only required if the number of animals exceeds the maximum number allowed by the ordinance. *Id.* (“The following standards shall apply in the areas designated for keeping of animals. If these standards are exceeded, an individual shall apply for a conditional use permit.”). Regarding the maximum number of animals allowable on a given property, the Zoning Ordinance states in relevant part as follows:

Number of Animal Units Allowed: The County determines impact by using animal units. The following tables show the animal unit equivalent for each species and the number of animal units allowed per acre. The Director may determine the animal unit equivalent for animals not listed below:

Animal	Animal Unit Equivalent
Dairy Cow	1.40
Slaughter Steer or Heifer	1.00
Horse	1.00
Swine	0.40
Sheep, Goat, Dog	0.20
Duck, Turkey, Cat	0.02
Chicken	0.01

Number of Acres	Animal Units Allowed Per/Acre
0-2 Acres	Only domesticated dogs and cats as pets up to one animal unit total and no more than 5 chickens
>2-4.5 Acres	One animal unit allowed
>4.5 to 10 Acres	Five animal units
>10 Acres or more (per quarter/quarter section or government lot)	30 animal units
More than one contiguous quarter/quarter or government lot	20 animal units per quarter/quarter or government lot even if the animals are kept on a single parcel

See Zoning Ord., § 6.21(A)(3). Both the text of the ordinance itself and the text of the table inserted above unambiguously stated that the number of animal units allowed at a property is to be determined on a “per acre” basis. As noted above, the Property is approximately 4.3 acres in size. The County’s zoning ordinance provides that properties in MU zoning districts may keep up to five “animal units” per acre. See Ordinance § 6.21(A)(3). The County zoning ordinance defines a dog as two-tenths of one “animal unit” (*i.e.*, five dogs = one “animal unit”). The County ordinance states that for properties between “2-4.5 acres” there is “One animal unit allowed.” *Id.* However, this is on a per acre basis. It is not the total number of dogs allowable on the Property

as a whole. Accordingly, Ms. Chapman may keep between five dogs per acre of the Property. As the Property is approximately 4.3 acres in size, Ms. Chapman may keep between 20 and 25 dogs at the Property as a matter of right before the Zoning Ordinance requires her to apply for a CUP.

I understand that the County staff interprets the text “One animal unit allowed” to be a total limit on the maximum number of dogs allowed at the Property, not a “per acre” limit. However, this is not what the Zoning Ordinance says. It is axiomatic that local government land use ordinances must be construed strictly in favor of property owners and against the government. *Frank’s Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608-09 (Minn. 1980). A corollary to this axiom is another axiom that a land use ordinance may not be extended by implication. *See Anderson’s American Law of Zoning*, 5th ed., § 41:5 (Thomson Reuters 2015) (citing cases from numerous jurisdictions and stating that “courts frequently state, as a corollary to the rule of strict construction, that a zoning ordinance will not be extended by implication.”). These axioms are usually applied to land use ordinances that are ambiguous. The County ordinance at issue here is not ambiguous at all. It very clearly states how many dogs are allowed at the Property. If the Planning Commission believes that the words “per acre” in the Zoning Ordinance is an error, then the Planning Commission can recommend that the County Board amend the Zoning Ordinance. In the meantime, the County has no discretion to deviate from the plain text of the ordinance as written.

Ms. Chapman is applying for a CUP because she has been instructed to do so the County staff and because she wants to be as cooperative as possible with representatives of the local government entities with jurisdiction over the Property. However, by applying for a CUP at the instruction of the staff, Ms. Chapman is not waiving any claim that she has a right to maintain her current number of dogs at the Property without a CUP. *See White v. City of Elk River*, 840 N.W.2d 43, 51 (Minn. 2013) (a property does not waive rights by submitting an application for a condition or interim use permit). Ms. Chapman therefore reserves her right to claim that the Zoning Ordinance allows the number of dogs she currently maintains at the Property regardless of how the Planning Commission votes on this application.

II. MS. CHAPMAN SATISFIES THE REQUIREMENTS OF THE COUNTY ZONING ORDINANCE FOR THE GRANTING OF A CUP.

To the extent a CUP is necessary here at all (which it is not), Ms. Chapman satisfies all applicable criteria stated in the Ordinance for a granting of a CUP. The County’s zoning ordinance states the following standards and criteria for the granting of a conditional use permit.

A conditional use permit may be granted only if the following findings can be made:

1. The use conforms to the land use or comprehensive plan of the county, if any.
2. The use is compatible with the existing neighborhood.

3. The use will not impede the normal and orderly development and improvement in the surrounding area of uses permitted by right in the zone district.
4. The location and character of the proposed use is considered to be consistent with a desirable pattern of development for the area.
5. When in the opinion of the Planning Commission a conditional use permit may result in a material adverse effect on the environment, the applicant may be requested by the Planning Commission to demonstrate the nature and extent of the effect.

Zoning Ord., § 8.4(C).² Here, Ms. Chapman satisfies all of these criteria. First, it is perfectly consistent with the Land Use chapter of the County’s comprehensive plan to keep dogs at the Property. Second, keeping dogs at the Property is consistent with the existing neighborhood. Third, there is no danger that the dogs kept by Ms. Chapman will impede development of the land surrounding the Property. Fourth, the “location and character of the proposed uses” is perfectly consistent with the “desirable pattern of development” for the area surrounding the Property (as evidenced by the fact that the number of dogs kept by Ms. Chapman is well beneath the maximum of dogs allowed at the Property “per acre” as set forth above). Finally, there is no danger that keeping dogs at the Property will have a “material adverse” effect on the environment. To the contrary, the Property is heavily wooded and Ms. Chapman’s dog kennels are fully screened from view.

As Ms. Chapman satisfies all applicable criteria for the granting of a CUP, the County does not have the discretion to deny her application. See *Yang v. Cty. of Carver*, 660 N.W.2d 828, 832 (Minn. Ct. App. 2003) (a county board does not have the discretion to deny a conditional use permit that conforms to all applicable requirements of the county zoning ordinance for the granting of conditional use permits); see also Minn. Stat. § 394.301, subd. 1 (2022). Such a denial lacks a rational basis as a matter of law. *Id.*

III. CONCLUSION.

Based on the foregoing, the current number of dogs maintained by Ms. Chapman at the Property is well beneath the maximum number allowed by the County’s zoning ordinance for the Property. A conditional use permit is not required here, and the County staff should not have instructed Ms.

² The standards and criteria established in this provision of the Zoning Ordinance are difficult to apply because they unduly broad and unreasonably vague. A decision lacks a rational basis if it is unsupported by substantial evidence, rests on a legally insufficient reason, or is premised on subjective or unreasonably vague standards. *PTL, LLC v. Chisago County Bd. of Comm’rs*, 656 N.W.2d 567, 571 (Minn. Ct. App. 2003). *PTL, LLC v. Chisago County Bd. of Comm’rs*, 656 N.W.2d 567, 571 (Minn. Ct. App. 2003).

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Chapman to apply for one. To the extent the members of the Planning Commission disagree with this conclusion, Ms. Chapman satisfies all requirements and criteria for the issuance of a CUP established in the County's zoning ordinance. On behalf of Ms. Chapman, I therefore respectfully ask that the Planning Commission vote to approve her application.

Please contact me at 612.455.6601 if you have any questions concerning this matter. Ms. Chapman will be present at the public hearing conducted by the Planning Commission on August 10, 2023, and will be happy to answer any questions you may have about her application.

Very truly yours,

MALKERSON GUNN MARTIN LLP

/s/Patrick B. Steinhoff

Patrick B. Steinhoff

PBS/ksk
c: Client

Jennifer Freking
Ely Veterinary Clinic
318 Miners Drive
Ely, MN 55731
218-343-1828

St Louis County Planning Commission

July 25, 2023

To Whom It May Concern,

I am writing this letter in support of Elizabeth Chapman's kennel permit at her home in Morse Township. I have known Elizabeth through the dog sledding community for over thirty years and as a veterinary client for twenty years with experience working as a vet tech herself. She is a valuable community member who has come to the aid of many animals in need as well as owners in need of assistance with their animals over the years. Elizabeth is a knowledgeable dog owner with decades of experience in training, management, and care.

I had the pleasure of visiting the kennel recently for veterinary exams and vaccinations. The property is quite ideal for her goals of maintaining her small kennel of dogs. The dogs were comfortable, happy, and remarkably quiet. There was no barking or excess noise as we walked around the kennel and examined each dog. Having worked with her dogs for generations, they really are not particularly vocal dogs in general. There are beautiful pine trees on the property that shelter the kennel. The kennels are kept clean with proper waste management. Every dog has proper housing accessible and high-quality nutrition and water provided daily. Her kennels are complete with a perimeter fence as added security.

The Ely area has a long history as a "Sled Dog Capital" as well as being a destination for many owners of athletic dogs such as dock diving, hunting, and bird dogs. Elizabeth Chapman is not a new kennel owner – rather she has decades of experience of canine management and has a history of being a good neighbor, a responsible dog owner, and valuable community member. I fully support approval of Elizabeth Chapman's kennel permit

Sincerely,



Dr Jennifer Freking DVM