

STATE OF VERMONT

SUPERIOR COURT
Environmental Division Unit

ENVIRONMENTAL DIVISION
Docket No. 99-8-16 Vtec

Blazer Home Occupation

JUDGMENT ORDER

Applicant Suzette Blazer (“Applicant”) seeks authority to conduct a dog breeding business as a home occupation from her residence at 61 Fourth Street in the Town of Fair Haven, Vermont. The Town of Fair Haven Planning Commission (“Planning Commission”) reviewed Mrs. Blazer’s home occupation application at its regularly scheduled meeting on August 3, 2016. When the Planning Commission approved the Blazer application, with three conditions, Applicant’s neighbor—Michael Bruce (“Appellant”)—filed a timely appeal with this Court.

When the parties advised the Court that they were unwilling to attempt to resolve their legal disputes through mediation, the Court set the matter for trial. The trial was conducted on December 13, 2016, at the Vermont Superior Court, Probate Division, in Rutland, Vermont. Prior to the trial, the Court conducted a site visit with the parties and Applicant’s husband. No testimony or other evidence was received at the site visit. Rather, the site visit provided the Court with some context for the evidence that was admitted at trial.

Once both parties had had a full and fair opportunity to present relevant evidence, the Court recessed the hearing to review its trial notes, conduct legal research, and outline its determinations. The Court then reconvened the hearing to present its Findings of Fact and Conclusions of Law on the record of the December 13, 2016 merits hearing. The reader is referred to that record for a full listing of the Court’s determinations. This Judgment Order is issued to fulfill our responsibilities under Rule 58 of the Vermont Rules of Civil Procedure and to provide an outline of the Court’s factual and legal determinations.

Applicant has bred dogs from her Fourth Street home since sometime in 2010. She currently breeds about nineteen puppies per year at her home, although when asked at trial,

Applicant declined to limit the maximum number of puppies that her breeding operation would produce in any one year. She currently has three female miniature poodles and two female Chihuahuas that she uses in her breeding operation, as well as a male miniature poodle, a male Chihuahua, and two service dogs for her personal use.

Applicant breeds her dogs to produce two to three litters per year. Each litter varies in size, although trial testimony revealed that Applicant in the past has had up to ten puppies in her home at any one time.

Applicant offers the puppies for sale to permanent homes. Buyers of her puppies come to Applicant's home to view and purchase a puppy.

Applicant and her husband live in a small home on a small village lot near the center of the Town of Fair Haven ("Town"). There is a small yard in the front of their home and a small, but somewhat larger fenced-in yard in the rear of their home. Their home is within sixty-six feet of their neighbor's home, Appellant Michael Bruce.

Applicant conducts her dog breeding activities mostly inside her home. However, the breeding adult dogs and bred puppies are allowed to go outside, mostly in the back yard, but sometimes in the front yard, for up to an hour at a time. Sometimes, Applicant allows the breeder dogs and puppies to remain outside in her back yard without supervision. Because of the breeder dogs' and puppies' needs to relieve themselves at several times during the day and night, Applicant allows them to go outside, in her back yard, during the day and night, including after 10:00 PM.

When the breeder dogs and bred puppies are outside, they enjoy running and playing. Applicant does not restrict these activities, including the barking that often accompanies their play. In fact, when they are in Applicant's back yard, the breeder dogs and puppies often bark. An individual puppy's barking encourages other puppies to bark. Because of their size and age, the puppy barking is high-pitched, sometimes loud, and often continuous. This barking is often so loud and continuous as to interfere with Appellant's ability to enjoy his outside rear deck.

Sometimes, the breeder dogs and puppies bark so loudly that their barking is annoying to Appellant and interferes with his use and enjoyment of his property, whether he is inside his home or outside of his home. In fact, even when the dogs are inside Applicant's home, their

barking can be loud enough to annoy and interfere with Appellant’s use and enjoyment of his home, inside or out.

Home occupations enjoy a heightened protection under Vermont law. See 24 V.S.A. § 4412(4), which provides that no municipal land use regulation “may infringe upon the right of any resident to use a minor portion of a dwelling unit for an occupation that is customary in residential areas and that does not have an undue adverse effect upon the character of the residential area in which the dwelling is located.” Id. The Town has adhered to this statutory directive by enacting Section 901 of the Town of Fairhaven Zoning Bylaws, as adopted on March 9, 2010 (“Bylaws”), which provides that the Bylaws “shall not prevent a resident from using a minor portion of a dwelling and a full accessory structure for an occupation which does not have an undue adverse effect on the residential character of the [zoning] district.” Id.

Section 901 provides several standards by which home occupation applications may be reviewed or conditioned; the standards applicable to the pending application are:

“1. the business shall be operated wholly within the principal building and accessory building.

... .

3. obnoxious or excessive noise, . . . that is detectable at the boundaries of the lot on which the dwelling is located shall not be generated.

...”

Id.

The credible evidence presented at trial caused this Court to conclude that Applicant’s puppy breeding business does not conform to the applicable Bylaw provisions. Our conclusions here were reinforced by the additional fact that Applicant has been operating her puppy breeding business from her home for the past six years. Her past business operation gave her neighbors, and this Court, a clear insight into how she intends to operate her business.

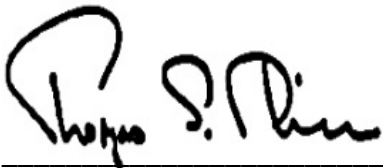
Applicant does not wholly operate her business in her home. Out of necessity, she must allow her breeding dogs and puppies to play and relieve themselves outdoors. While we are sympathetic to this necessity, it causes Applicant’s puppy breeding business to operate outside the bounds of a home occupation, as defined by 24 V.S.A. § 4412(4) and Bylaw §901(1), since puppy breeding requires the dogs and puppies to regularly be outside of Applicant’s home.

Applicant's puppy breeding business also runs afoul of Bylaws § 901(3) by causing noises that are detectable at Applicant's and Appellant's shared boundary. Due to the frequency of the loud, high-pitched barking from multiple dogs that sometimes continues for up to an hour at a time, we conclude that this barking causes obnoxious and excessive noise. Our conclusion here is buttressed by the fact that while there are other area homes where dogs live, no area homes have the volume of puppies and breeder dogs barking that Applicant's business operation causes. The manner in which Applicant operates her breeding operation causes an undue adverse effect on the residential character of the area and is therefore in violation of the directive of both 24 V.S.A. § 4412(4) and Bylaw §901.

For all these reasons, we **DENY** Applicant Suzette Blazer's application for a home occupation permit for her puppy breeding business at her home at 61 Fourth Street. As a consequence of our determinations, the Planning Commission's approval of her application is **VACATED**.

This completes the proceedings before this Court on the pending application.

Electronically signed on January 06, 2017 at Newfane, Vermont, pursuant to V.R.E.F. 7(d).

A handwritten signature in black ink, appearing to read "Thomas S. Durkin", written over a horizontal line.

Thomas S. Durkin, Judge
Environmental Division