

1 BOARD OF SUPERVISORS, COUNTY OF LAKE, STATE OF CALIFORNIA

2
3 In the Matter of the Appeal)

4 of Durand Duin)

5 (AB 15-16) [Blythe Lucero and)
6 Vincent Corbella,)
7 Project Applicants])

FINDINGS OF FACT AND DECISION

8 This proceeding was commenced by virtue of an appeal by Durand B. Duin. (the
9 "Appellant") of the Planning Commission's determination on October 27, 2016, to approve
10 the application of Blythe Lucero and Vincent A. Corbella (the "Applicants") for a Major Use
11 Permit (UP 15-16) to allow a large kennel on a parcel of almost 12 acres and establish an
12 animal care facility for a maximum of 20 elderly cats and 14 elderly dogs (the "Project") at
13 11767 Candy Lane in Lower Lake, California.

14 A duly noticed public hearing before the Board of Supervisors was initially
15 scheduled for November 22, 2016, continued to December 6, 2016, and again continued
16 to December 13, 2016. On December 13, 2016, evidence, both oral and documentary,
17 was presented. Based upon the evidence and applicable law, we find the following:

18 1. That the Lake County Planning Commission held a public hearing on October 27,
19 2016. The Planning Commission approved the Major Use Permit (UP 15-16) to allow a
20 large kennel on the Applicants' 12-acre parcel to be used to care for a maximum of 20
21 elderly cats and 14 elderly dogs. The Project consists of an already-existing 2,375 square
22 foot barn and outdoor area containing pens with double-fenced yards, dog pens enclosed
23 with six-foot high fencing, and a cat containment area enclosed in climb-proof material.
24 The Project is located at 11767 Candy Lane in the Twin Lakes area in Lower Lake,
25 California. The Planning Commission found that the Project did meet the requirements of
26 Section 51.4 of the Lake County Zoning Ordinance.

27 2. That the Appellant is Durand B. Duin, who filed an appeal of the above-described
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1 decision of the Planning Commission on October 28, 2016.

2 3. That staff of the Community Development Department presented evidence both
3 documentary and testimonial. Staff submitted staff reports dated November 8, 2016 and
4 December 6, 2016, with attachments which included the appeal form and its attachments,
5 the staff report to the Planning Commission dated July 20, 2016, the staff report to the
6 Planning Commission dated September 30, 2016, minutes of the August 11, September
7 22, and October 27, 2016 hearings on the Project before the Planning Commission,
8 correspondence from surrounding property owners, correspondence from the attorney for
9 the Project Applicants, correspondence from the attorney for the Appellant, and Initial
10 Study 15-35. Testimony included:

11 a. Associate Planner Keith Gronendyke presented the staff report and made a
12 power point presentation. Mr. Gronendyke testified that the Project would allow a
13 large kennel on a parcel that is almost 12 acres in size. The Project would house a
14 maximum of 20 elderly cats and 14 elderly dogs. The animals would be housed in
15 an existing 2,375 square foot barn and there would be an outdoor area consisting
16 of pens, outdoor kennels, and play areas. Mr. Gronendyke testified that the project
17 site is in the rural residential zoning district which allows, without a use permit, 11
18 hogs, 22, horses, 69 goats, 528 chickens, or 220 ducks. A large kennel is not, in
19 and of itself, detrimental. As a result of the Project's rural location and the
20 conditions of approval required by the use permit, any impacts will be mitigated to
21 less than significant. The Project is adequate in size. The Project is almost 12
22 acres while the total Project footprint is approximately 6600 square feet. County
23 noise standards must be adhered to. The Project is located on Candy Lane and
24 that roadway will adequately accommodate the proposed use. There are
25 adequate public and/or private services to serve the project. Both the Lake County
26 Sheriff's Office and the Lake County Fire Protection District will serve the Project.
27 There is an existing potable well and an existing sewage system. The permit
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holder is required to comply with all Environmental Health Division requirements. The Project is in compliance with the General Plan and the Lower Lake Area Plan. The Project is in the rural lands zoning district which allows a large kennel on parcels not less than 5 acres in size. There is an open Code Enforcement violation relating to this Project because of construction without building permits, but this major use permit will correct that. Although the application indicated the Project is an animal refuge, it is an application for a large kennel and has been processed as such.

b. Environmental Health Director Ray Ruminski testified that Environmental Health is the regulatory agency in the County for on-site septic systems. There is an existing septic system next to a leach line. Mr. Ruminski testified that the existing septic system may not be sufficient for this Project. It would depend upon how much use there is and for how long a period of time. Too much use could create problems in the leach field and in the septic tank. Environmental Health has not yet done a review to determine what is needed for a project. There are options available if the existing septic is insufficient. The Applicants could either enlarge the existing tank or install a separate tank and leach field for the Project.

c. Animal Control Deputy Director testified Nehemiah White testified that Animal Control investigates and, when necessary, issues citations to prosecute barking dog complaints if the complaint cannot otherwise be resolved.

4. That Appellant presented evidence, both documentary and testimonial. Testimony included:

a. Robert Riggs, legal counsel for the Appellant, made a power point presentation and testified that this Project is actually moving an existing facility from San Pablo to Twin Lakes and that is not disclosed in the Project application. However, the facility in San Pablo is in an institutional zone near a busy freeway. This Project would be located in a residential area. Mr. Riggs stated that this

1 Project location is improper. The Board of Supervisors has the discretion to
2 determine whether this is a proper site. A large kennel is allowed in rural residential
3 zoning on sites not less than 5 acres. While the subject parcel exceeds the size
4 restriction, the Project site does not. The Project does not include the residence.
5 On the west side of the parcel, a large part of the parcel is taken up with Spirit Lake,
6 which is no part of the subject Project. Across from the lake is a hilly area that is not
7 part of the Project site. The Project is right by Candy Lane and right across from
8 one-acre residential parcels. The residential parcels are zoned as suburban
9 residential which allows no large kennels. The location of this Project is essentially
10 the equivalent of putting it in suburban residential. Additionally, inadequate space
11 is a problem. The appellant is going to partition the barn and build a fence. The
12 Project is next to a watershed. The fact that there is no septic is a critical problem.
13 The existing septic tank and leach line were intended for a three-bedroom
14 residence, not for a 34-animal refuge. Throughout the process, the amount of
15 wastewater needed to properly clean up after the animals was stated to be 120
16 gallons per month which is grossly understated. It came out at the Planning
17 Commission that the amount of wastewater is actually 120 gallons a day. There
18 are many unanswered questions. It is unknown how the transition to Lake County
19 will go given the Applicants' health issues. Funding for the Project is another
20 unanswered question. Noise is a huge issue. Mr. Riggs noted that the Appellant
21 had submitted a report from Pablo Daroux, an acoustical consultant, who has made
22 recommendations that are key noise abatement measures. Mr. Riggs stated that
23 the conditions of approval for the Project permit should be for fewer animals, limited
24 to three years, limited to the specific animals the Applicants are bringing with them
25 to Lake County, and the permit should be reviewed by the Planning Commission
26 after one year.

27 b. The Appellant, Durand Durin, testified that he and his partner are the owners
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1 of the Spirit Lake Bed and Breakfast which is located near the Project area. Twin
2 Lakes is not the right location for this type of Project. He and his partner have
3 invested over \$500,000 to purchase and improve their property. This Project would
4 infringe on the welfare of all the neighbors in the community. The Appellant testified
5 that they anticipate a potential 25% decline in property values in the area if this
6 Project goes forward. He is concerned about the impact to the environment when it
7 is unknown what type of toxicity will be coming into the watershed.

8 5. The Project Applicants presented evidence both documentary and testimonial
9 Testimony included:

10 a. Andre Ross, legal counsel for the Appellants, testified that the
11 Luceros purchased the subject property in August of 2014. The Appellant
12 purchased a neighboring property in June of 2015. While there are no pending
13 permit applications for the Appellant's business, the Luceros have worked with the
14 County to obtain a use permit for their Project. Mr. Ross testified that it is clear
15 that the Luceros will have to meet septic requirements for this Project and that
16 obtaining a kennel permit from Animal Control is a required condition to the use
17 permit. Mr. Ross stated that the recommendations of Mr. Daroux, the Appellant's
18 acoustics expert, were relevant only as to whether the County should change its
19 existing noise ordinance. Mr. Ross stated the Appellant frequently referred to his
20 clients' Project as a commercial project when it is not. This matter is a simple one:
21 The Applicants applied for a use permit which, after three hearings, was approved
22 by the Planning Commission pursuant to certain conditions to the use permit.

23 b. Project Applicant Blythe Lucero testified that she had called the Planning
24 Department about 18 months ago and asked someone there about setting up the
25 barn for the animals. She was told that if she was not going to change the footprint
26 or do anything electrical, she could go ahead. One of her neighbors complained
27 that she had people living in the barn and that is what the code enforcement matter
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1 is about.

2 6. That numerous members of the public who are residents in the Project area
3 testified in opposition to the Project and urged the granting of this Appeal including, but not
4 limited, to David Rufener, Joyce Lashbrook, Phyllis Murphy, John Biron, and Daniel
5 Stellingwerf.

6 7. That several members of the public testified in support of the Project including, but
7 not limited to Sam Euston, and Melissa Hughes. Additionally, the several members of the
8 public presented statements of support via video tape including, but not limited to, Tracian
9 Goodwill, Jean Yanich, and CJ LeBrun.

10 8. That as to the Appellant's challenge to the approval of the Major Use Permit for the
11 Project (UP 15-16) , the Appellant has failed to offer sufficient evidence to support this
12 appeal. As described hereinbelow, substantial evidence supports the ability of this Board
13 to make the findings necessary to approve this Major Use Permit.

14 9. That the Lake County Planning Commission determined that the proposed Major
15 Use Permit (UP 15-16) met the findings required for approval delineated in Section 51.4 of
16 the Lake County Zoning Ordinance and this Board expressly reaffirms those findings based
17 upon the record of these proceedings, which includes, but is not limited to . the analysis
18 provided in the staff report to this Board dated November 8, 2016:

19 a. That the establishment, maintenance, or operation of the use applied for will
20 not under the circumstances of this particular case, be detrimental to the health,
21 safety, morals, comfort, and general welfare of the persons residing or working in the
22 neighborhood of such proposed use, or be detrimental to property and
23 improvements in the neighborhood or the general welfare of the County. (Zoning
24 Ordinance Sec. 51.4(a)(1).)

25 County staff presented evidence, both through testimony and in documents
26 admitted into evidence during these proceedings, that the Project, in and of itself, will
27 not be detrimental to the public. The Project site is zoned rural residential and,
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1 presently without the necessity of a use permit, a property owner at this location has
2 the right to 11 hogs, 22 horses, 69 goats, 528 chickens, or 220 ducks. The Project
3 is located in a rural area and the permit conditions of approval, which include but are
4 not limited to, conditions concerning animal waste removal and wastewater, sound
5 emissions, perimeter fencing, and State and County agency permit requirements,
6 will mitigate any impacts to less than significant.

7 b. That the site for the project is adequate in size, shape, location, and physical
8 characteristics to accommodate the type of use and level of development proposed.
9 (Zoning Ordinance Sec. 51.4(a)(2).)

10 County staff presented evidence, both through testimony and documentary
11 evidence, that the Project is adequate in size, shape, location, and physical
12 characteristics to accommodate the proposed use. The Project site is almost 12
13 acres and the total footprint for the Project is approximately 6,600 square feet. The
14 Project site is sufficient to accommodate the proposed physical improvements. The
15 noise standards of Article 41 of the Zoning Ordinance are required to be adhered to
16 and the dogs in the kennel are required to be placed indoors in the evening.

17 c. That the streets, highways and pedestrian facilities are reasonably adequate
18 to safely accommodate the specific proposed use. (Zoning Ordinance Sec.
19 51.4(a)(3).)

20 County staff presented evidence, both through testimony and documentary
21 evidence, that the streets, highways, and pedestrian facilities are reasonably
22 adequate to accommodate the proposed use. The Project is not a commercial
23 kennel such that there will be a steady flow of customers and visitors. Candy Lane,
24 the existing public right-of-way, is adequate to safely accommodate the proposed
25 use.

26 d. That there are adequate public or private services, including but not limited to
27 fire protection, water supply, sewage disposal, and police protection to serve the
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1 project. (Zoning Ordinance Sec. 51.4(a)(4).)

2 County staff presented evidence, both through testimony and documentary
3 evidence that there are adequate public and private services to serve this Project.
4 The Lake County Fire District and the Lake County Sheriff's Office will provide
5 services to this Project. The Project site has an existing potable well for water needs
6 and an existing septic system for sewage removal. It is a condition of the use
7 permit that the Applicants comply with all requirements of Lake County
8 Environmental Health as to water and hazardous materials storage. It is a further
9 condition of the use permit that all necessary permits be obtained from State and
10 County agencies having jurisdiction over this Project. If the existing septic system is
11 insufficient for the needs of the Project, the Project Applicants will have to either
12 enlarge the existing septic system to accommodate the needs of the Project or the
13 Project will require its own septic system.

14 e. That the Project is in conformance with the applicable provisions and policies
15 of the Zoning Code, the General Plan, and Lower Lake Area Plan. (Zoning
16 Ordinance Sec. 51.4(a)(5).

17 County staff presented evidence, both through testimony and documentary
18 evidence, that the Project is generally consistent with the Lake County General Plan,
19 the Lower Lake Area Plan, and the Zoning Ordinance. The Project will be located in
20 a rural residential zoning district, which allows a large kennel on parcels larger than 5
21 acres with the approval of a major use permit.

22 f. That no violations of Chapters 5, 17, 21, 23, or 26 of the Lake County Code
23 currently exist on the property, unless the purpose of the permit is to correct the
24 violation, or the permit relates to a portion of the property which is sufficiently
25 separate and apart from the portion of the property in violation so as not to be
26 affected by the violation from a public health, safety or general welfare basis. (Zoning
27 Ordinance Sec. 51.4(a)(6).)

County staff presented evidence, both through testimony and in documentary evidence submitted to this Board, that there is an open code violation case regarding construction without building permits, this Use Permit application will resolve the matter.

10. That as to the Major Use Permit (UP 15-16), this Board finds that on the basis of Initial Study No. 15-35 and the mitigation measures added to the Project, this Use Permit for a large kennel will not have a significant effect on the environment. This Board adopts the mitigated negative declaration with the findings listed in the staff report to this Board dated November 8, 2016.

11. That the Major Use Permit for this Project (UP 15-16) to allow a large kennel on the subject parcel located at 11767 Candy Lane is hereby granted subject to the above-referenced mitigation measures specified and use permit conditions described. Additionally, some of the proposed Project's mitigation measures are contained in the Project description and the Board may reasonably presume that said mitigation measures will be implemented.

12. That this Board has considered and incorporates by reference the Community Development staff memorandum and attachments thereto, the written submissions of the Appellant, the written submissions of the Project Applicants, and those of the members of the public for public hearing of this matter.

13. Based upon the foregoing and for the reasons set forth hereinabove, this Board denies the appeal.

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1 NOTICE TO APPELLANT: You are hereby given notice that the time within which any
2 judicial review of the decision herein may be sought is governed by the provisions of the
3 Code of Civil Procedures Section 1094.5.

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5 Dated: _____

CHAIR, Board of Supervisors

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8 CAROL J. HUCHINGSON
9 Clerk to the Board
10 of Supervisors

APPROVED AS TO FORM:

11 By: _____
12 Deputy

ANITA L. GRANT
County Counsel