

**CONDITIONAL USE RESOLUTION NO. CON2001-00044**

**WHEREAS**, Mark Wasserman (owner - applicant); pursuant to Section V-D of the Wichita-Sedgwick County Unified Zoning Code (herein referred to as Unified Zoning Code), requested a Conditional Use Permit to allow a kennel for boarding, breeding and training on approximately 6.3 acres zoned "RR" Rural Residential described as:

Parcel 1: Beginning 660 feet North of the Southwest corner of the Southwest Quarter of section 11, Township 26 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas; thence north 220 feet; thence East parallel with the South line of said Southwest Quarter 660 feet; thence South 220 feet to a point 660 feet North of the South line of said Southwest Quarter; thence West 660 feet to the place of beginning. Key# KE-91-1C

Parcel 2: Beginning 462 feet North of the Southwest corner of Section 11, Township 26 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas; thence East parallel with the South line of the said Section 11, a distance of 660 feet; thence North parallel with the West line of said Section 11, a distance of 198 feet; thence West 660 feet; thence South 198 feet to the place of beginning. Key #KE-91-1C

**WHEREAS**, proper notice as required by the Unified Zoning Code and by the policy of the Metropolitan Area Planning Commission (hereinafter referred to as MAPC) has been given; and

**WHEREAS**, the MAPC did, at the meeting of September 20, 2001, consider said application; and

**WHEREAS**, the MAPC has authority to permit a Conditional Use, subject to any special conditions deemed appropriate in order to assure full compliance with the criteria of the Unified Zoning Code.

**NOW, THEREFORE, BE IT RESOLVED** by the Metropolitan Area Planning Commission that this application be approved to permit a Conditional Use to allow a kennel for breeding, boarding and training on approximately 6.3 acres zoned "RR" Rural Residential described as;

Parcel 1: Beginning 660 feet North of the Southwest corner of the Southwest Quarter of section 11, Township 26 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas; thence north 220 feet; thence East parallel with the South line of said Southwest Quarter 660 feet; thence South 220 feet to a point 660 feet North of the South line of said Southwest Quarter; thence West 660 feet to the place of beginning. Key# KE-91-1C

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thence South 198 feet to the place of beginning. Key #KE-91-1C

Subject to the following conditions and contingent on the applicant resolving issues to the satisfaction of the Kansas Department of Health and Environment and the Sedgwick County Environmental Health Department in regards to: 1) The condition of the lagoon. 2) The facility generating wastewater containing animal waste and 3) The proper removal and disposal of dog feces and related material.

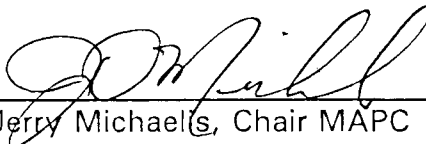
- A. The applicant shall comply with all applicable state and local rules and requirements dealing with kennels (e.g. Chapter 5 of the Sedgwick County Code).
- B. The property shall be developed in accordance with a revised site plan approved by the Planning Director, showing screening, lighting, landscaping, parking, setbacks, easements and all buildings in conformance with the UZC.
- C. The kennel operator shall have on file proof of rabies vaccinations by a licensed veterinarian and proof of identification and ownership for all dogs five months and older.
- D. Artificial lighting shall be provided in any indoor run for a minimum of 25 feet of candle illumination. Lighting shall be a minimum of 30 inches above the floor and uniformly distributed.
- E. Cleaning of the boarding kennel facility shall be performed as often as necessary to maintain sanitary conditions, and a "suitable method" of eliminating excess water from animal housing facilities shall be provided as determined by the Department of Community Health. Interior surface materials shall be constructed of non-porous materials that are impervious to moisture. The indoor kennel facilities shall have fresh air ventilation providing a complete air change at a minimum of five- to six- minute intervals. Exhaust and vents or air conditioning shall be provided when the ambient temperature is 85 degrees or higher.
- F. Sufficient quantities of food and water shall be provided to keep the dogs in good physical condition. The animals shall be fed at least once daily and provided clean water at all times. Food and water containers shall be located to minimize contamination and shall be cleaned as often as necessary to maintain sanitary conditions.
- G. All waste materials shall be disposed of in such a manner as to minimize odors and disease hazards. The boarding kennel shall be maintained in a sanitary manner as required by applicable codes (e.g. Chapter 14 of the Sedgwick County Code).
- H. The animals confined in the boarding kennel shall be maintained in good physical condition, free of infectious diseases and parasites.
- I. Dogs shall be contained in an enclosed structure with no wall openings between

the hours of 10:00 P.M. and 6:00 A.M, for Phase II of the expansion. Phase II of the expansion is a proposed 120-ft x 14-ft kennel with runs on ether side of it.

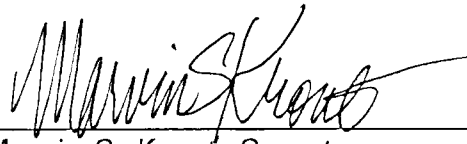
- J. The boarding facility shall be open to the unannounced inspection by Sedgwick County of Code Enforcement personnel during reasonable daylight hours to insure continued compliance with the above requirements.
- K. Any violation of the foregoing conditions shall render this Conditional Use permit null and void

Adopted this 20th day of September 2001. This resolution shall become effective on the fifteenth day after the date last noted above unless the matter is forwarded to the Governing Body for final action under the provisions of Section V-D.6. When any one or more of the exceptions listed in Section V-D.6 exist, this resolution with its conditions of approval shall be considered a recommendation of the MAPC to the Governing Body which shall then have final authority to approve, approve with conditions or modifications, or deny the Conditional Use application.

METROPOLITAN AREA PLANNING COMMISSION

  
\_\_\_\_\_  
Jerry Michaels, Chair MAPC

ATTEST:

  
\_\_\_\_\_  
Marvin S. Krout, Secretary

CON2001-00044

1295' ±

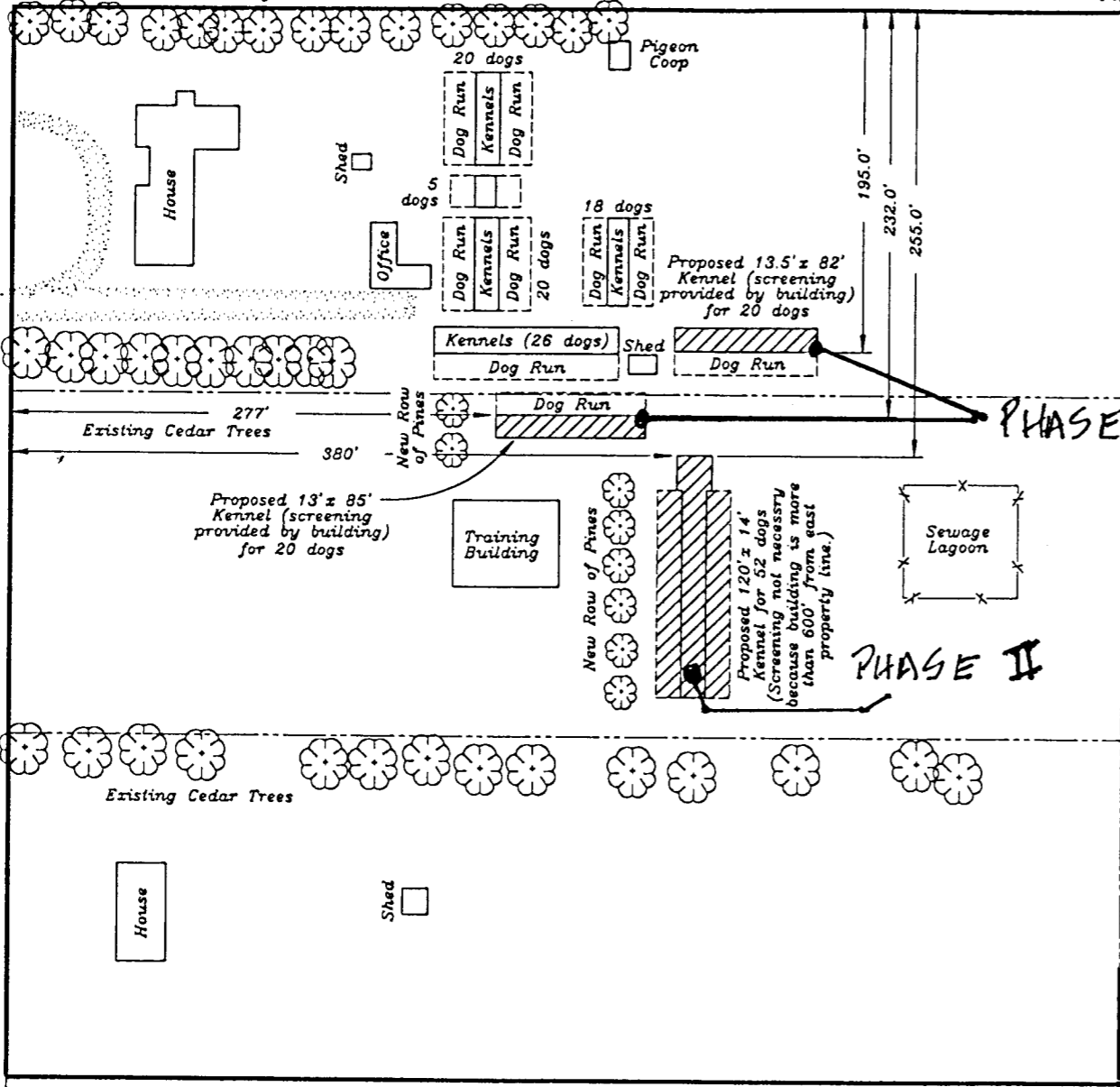
Existing Cedar Trees

# SKETCH FOR CONDITIONAL USE PERMIT for Mark Wasserman

HILLSIDE AVENUE

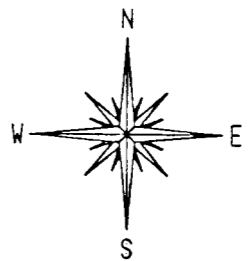
616' ±

695' ±



PHASE I

PHASE II



SCALE: 1" = 100'

Current housing capacity: 89 dogs  
 Proposed new housing: 92 dogs  
 Proposed total housing: 181 dogs

NOTE: All proposed structures are shown in hatching.

PART OF THE SW 1/4  
 OF SEC. 11, T26S, R1E  
 OF THE 6th P.M., SEDGWICK  
 COUNTY, KANSAS  
 20.0 acres ±

## SITE PLAN



Griffiths & Associates, Inc.

Land Surveyors

1333 N. Broadway, Ste. A  
 Wichita, KS 67214  
 (316) 267-2900  
 fax (316) 267-4431

APPROVED *[Signature]* 10-31-01

61ST STREET

260' ±



AGENDA ITEM NO. \_\_\_\_\_

**STAFF REPORT**

City of Kechi Planning Commission – September 11, 2001  
MAPC – September 20, 2001

**CASE NUMBER:** CON2001-00044

**APPLICANT/OWNER:** Marc Wasserman

**AGENT:** Ken Dannenberg

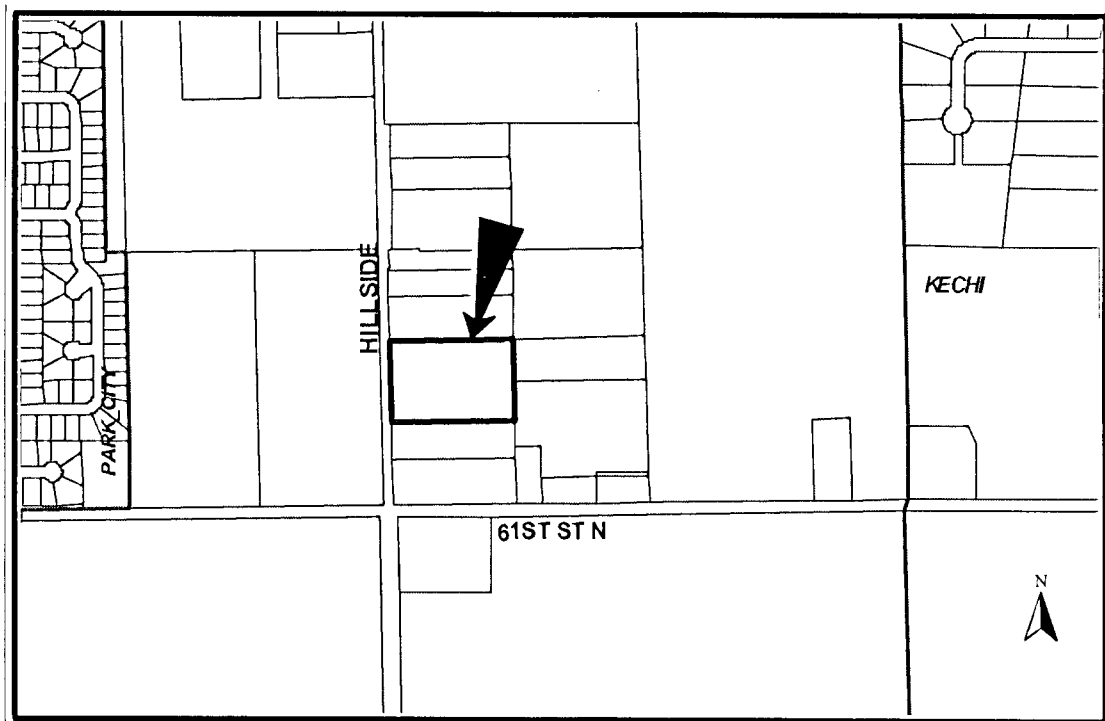
**REQUEST:** Conditional Use to allow Kennel for boarding, breeding & training

**CURRENT ZONING:** "RR" Rural Residential

**SITE SIZE:** 6.3 acres

**LOCATION:** Northeast of the Hillside – 61st Street North intersection

**PROPOSED USES:** Expansion of the current kennel



**BACKGROUND:** The applicant is requesting consideration for a Conditional Use to allow expansion of a kennel for breeding, training and boarding of dogs on property zoned "RR" Rural Residential and is located northeast of the 61st Street North – Hillside intersection. The kennel was registered as a legal nonconforming use in 1999, when the applicant was permitted to expand to its current size. The new proposed expansion, more than doubling the current number of kennel/runs, requires the applicant to request a Conditional Use and make the property conform to the zoning code. The site (6.3 acres, see site plan) is not platted and is part of a total of 20 acres owned by the applicant. The site (and the rest of the applicant's property) is within the City of Kechi's 'area of zoning influence', with Hillside being its western boundary. On the other side of Hillside (west), the Park City 'area of zoning influence' begins. The applicant proposes to expand his current kennel's capacity for housing dogs from its current capacity of 85 kennels/runs to another 96 kennel/runs, for a total of 181 kennel/runs. Each kennel/run (unit) can house 1 to 2 dogs per unit, making the current possible dog population 85-170 dogs. With the proposed units, the future possible dog population increases to 181-362 dogs; more than doubling the current possible dog population. The number of puppies that could be included in these current and proposed facilities is unknown. A dog is defined in the UZC as an adult when over 12 months of age; a puppy is less than 12 months old.

The applicant has submitted a site plan showing the existing and proposed use of the subject property. Listed below are the existing facilities, as scaled by staff;

- (a) The closest kennel/run is 37.5-ft from the north property/site line (2 runs for 1 kennel). This existing kennel/runs is not in compliance with the Conditional Use standard for this activity, which has a minimum distance of the building to the property line of 50-ft and 200-ft from the nearest neighbor.
- (b) Two kennel/runs 125-ft from the north property/site line (2 runs for 1 kennel),
- (c) A kennel/run at approximately 185-ft from the north property/site line and 175-ft from the east side of the site and
- (d) A training building approximately 297.5-ft from the north property/site line and approximately 197.5-ft from the south side of the site.

All the existing kennel/runs are more than 200-ft from all other parts of the site/property, with the two exceptions noted. All are shown on the site plan as A – D.

The applicant proposes to put 3 more kennel/runs in (as scaled by the applicant's surveyor). Listed below are the proposed kennel/runs

- (e) A proposed kennel, attached to an existing run 181.5-ft from the north property/site line (195-ft – 13.5-ft), the facility is 13.5-ft x 82-ft.
- (f) A proposed kennel, attached to an existing run, will be 218-ft (232-ft – 13.5-ft) from the north property/site line, the facility is 13-ft x 85-ft.
- (g) A proposed kennel with proposed 2 runs attached 255-ft from the north property/site line, but 25-ft from the south side of the site, the facility is 120-ft x

14-ft. Platting of this site would cause this unit to not be in compliance with the minimum distance of the building to the property line of 50-ft and 200-ft from the nearest neighbor. This unit would need to be moved if the Conditional Use is approved. All the proposed facilities are more than 200-ft from all other parts of the property/site, with the one exception noted. Shown on the site plan as letters E, F and G.

Currently this site is developed, as noted. The applicant owns the property abutting on the east. Beyond the applicant's (on the east side) property, the property to the east is being used for agriculture. Approximately ½ mile away from the applicant's properties eastern edge is the City of Kechi. The property in Kechi is being developed as single family residential. The properties to the north of the site/property line have two houses on them and then a manufacturing facility. South of the applicant's site is a lot owned by the applicant and south of that a vacant lot. West of Hillside there is agricultural land and approximately ½ mile west from Hillside there are single family residential being built in Park City. The applicant does not live on site, but has members of his staff living on site or on the applicant's property.

The Unified Zoning Code's (UZC) definition of a Kennel for breeding, boarding and training as "...premises housing 5 or more adult dogs, three or more which are owned by someone other than the property resident, and premises housing over 10 adult dogs. The Unified Zoning Code requires a Conditional Use for Kennel for breeding, training and boarding in RR Rural Residential zoning districts, with specific conditions to be met.

There has been 3 other Conditional Use request for kennels for breeding, boarding and training in this area:

- (a) CU383 (1995), located at 109<sup>th</sup> Street North & Hillside, denied by the MAPC, the BCC and the Kechi Planning Commission.
- (b) CU389 (1996) just west of the above location and again denied.
- (c) CU426 (1997), located at 53<sup>rd</sup> Street North – K-254 West, denied by the Kechi Planning Commission and the MAPC

**CASE HISTORY:** The property is being used for a kennel for breeding, boarding and training. There is no record of the applicant receiving a Conditional Use for this activity at this site. Mr. Wasserman applied for a building permit 12-02-99 for an accessory building to house dogs. The building was 10-ft x 110-ft; approximately the size of 2 of the 3 proposed structures. The application was approved by County Code Enforcement, as was a legal non-conforming registration. In the registration of the use the applicant noted, without documentation being supplied to the Planning Staff, that the 'kennel business' had been there for 40 years, and this was basis for applying for legal non-conformity status. There has been a written complaint in regards to barking in 2000 and when this application was posted for public hearing. Since the notice of public hearing there has been a call complaining of barking, especially during feeding

times, and odor.

**ADJACENT ZONING AND LAND USE:**

NORTH:	"RR" Rural Residential	Residential, manufacturing
EAST:	"RR" Rural Residential	Agriculture
SOUTH:	"RR" Rural Residential	Agriculture
WEST:	"RR" Rural Residential	Agricultural

**PUBLIC SERVICES:** 61<sup>st</sup> Street North is classified as minor arterial and is a paved two-lane road on either side of this intersection. Hillside is classified as a minor arterial on the south side of this intersection and is a paved two-lane road on both sides of the intersection. There are no traffic counts at this intersection. There is no sewer at this site, but a lagoon. The applicant applied for a variance (and was approved) of the sewer facility standards to allow hook up to the lagoon for a past expansion of his kennels on 12-99. The variance was approved. Staff has contacted the Environmental Health Department for comments in required to the impact of the proposed expansion on the lagoon. Environmental Health is not recommending expansion of the kennels at this time, sighting environmental health concerns over the lagoon and the surrounding sewage system. Environmental Health has advised Staff that the facility is currently under review. There is electric and well water.

**CONFORMANCE TO PLANS/POLICIES:** The Comprehensive Plan identifies this property as being in Kechi's growth area, with the Park City growth area abutting it on the west. The small city growth areas indicate the direction and magnitude of growth these communities can expect to experience over the next 30 years. The Unified Zoning Code requires a Conditional Use for kennels for breeding, boarding and training in RR Rural Residential zoning. The Kechi Comprehensive Plan identifies this land as agricultural and discourages non-farming activity to protect this productive land.

**RECOMMENDATION:** Based on the information available prior to the public hearing, staff recommends the application be DENIED. Dog kennels of a 'reasonable size' are appropriate for rural areas of the County and, with certain restrictions, can be compatible with nearby residences and agricultural operations. However, the applicant is already operating a relatively large kennel (up to a possible 170 dogs) plus an uncertain number of puppies, in an area that is projected to urbanize in the future. Granting permission to double the number of dogs would be out of character and inappropriate for this area and will inhibit urbanization of nearby property. However if the Planning Commission approves the Conditional Use request then Staff recommends the following conditions be applied:

- A. The applicant shall comply with all applicable state and local rules and requirements dealing with kennels (e.g. Chapter 5 of the Sedgwick County Code).
- B. The property shall be developed in accordance with a revised site plan approved

- by the Planning Director, showing screening, lighting, landscaping, parking, setbacks, easements and all buildings in conformance with the UZC.
- C. The kennel operator shall have on file proof of rabies vaccinations by a licensed veterinarian and proof of identification and ownership for all dogs five months and older.
  - D. Artificial lighting shall be provided in any indoor run for a minimum of 25 feet of candle illumination. Lighting shall be a minimum of 30 inches above the floor and uniformly distributed.
  - E. Cleaning of the boarding kennel facility shall be performed as often as necessary to maintain sanitary conditions, and a "suitable method" of eliminating excess water from animal housing facilities shall be provided as determined by the Department of Community Health. Interior surface materials shall be constructed of non-porous materials that are impervious to moisture. The indoor kennel facilities shall have fresh air ventilation providing a complete air change at a minimum of five- to six- minute intervals. Exhaust and vents or air conditioning shall be provided when the ambient temperature is 85 degrees or higher.
  - F. Sufficient quantities of food and water shall be provided to keep the dogs in good physical condition. The animals shall be fed at least once daily and provided clean water at all times. Food and water containers shall be located to minimize contamination and shall be cleaned as often as necessary to maintain sanitary conditions.
  - G. All waste materials shall be disposed of in such a manner as to minimize odors and disease hazards. The boarding kennel shall be maintained in a sanitary manner as required by applicable codes (e.g. Chapter 14 of the Sedgwick County Code).
  - H. The animals confined in the boarding kennel shall be maintained in good physical condition, free of infectious diseases and parasites.
  - I. The number of adult dogs and puppies authorized to be boarded by virtue of this resolution shall not exceed (to be determined by the Commission) at any one time. Dogs shall be contained in an enclosed structure with no wall openings between the hours of 10:00 P.M. and 6:00 A.M.
  - J. The boarding facility shall be open to the unannounced inspection by Sedgwick County of Code Enforcement personnel during reasonable daylight hours to insure continued compliance with the above requirements.
  - K. Any violation of the foregoing conditions shall render this Conditional Use permit null and void

The recommendation for DENIAL is based on the following findings:

1. The zoning, uses and character of the neighborhood. The applicant's site and the surrounding area is zoned "RR" Rural Residential. Use of the surrounding area is predominately for agriculture, with two single-family residential subdivisions/developments within ½ mile on the west (Park City) and east (Kechi) sides and two residences on large lots on the north side. Scattered

agricultural and residential use to the south.

2. The suitability of the subject property for the uses to which it has been restricted: No evidence has been submitted that show this kennel is at full capacity, or why the property cannot continue to be used for up to the permitted possible 170 dogs today. Therefore the need for the proposed expansion, which would allow up to 362 dogs, is unnecessary and the current zoning restrictions are appropriate
3. Extent to which removal of the restrictions will detrimentally affect nearby property. The applicant's proposed expansion would bring the total possible dogs on the site from a current 85-170 to 181-362. In Staff's research (1994 to the present) of this type of kennel, this request represents the largest number of dogs in a kennel ever requested by an applicant. The possible noise of the barking dogs, the amount of waste generated and the odors by them would adversely affect an extensive area of land, including the development of residential property in both Kechi and Park City. With the applicant having another 14 acres abutting the current kennel site, approval of the Conditional Use would establish a precedent for the development of additional acreage for even more dogs.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The Comprehensive Plan does not specifically address location for this type of kennel. This type of kennel does have characteristics of a commercial operation, particularly in respect to noise and the potential for 24-hour impact. Commercial operations should be located on arterials or thoroughfares; Hillside is neither north of the Hillside – 61<sup>st</sup> intersection. Commercial operations should be design so as to minimize the impact of adverse activities and have site design features that limit noise. The applicant's proposal does not address the impact of possibly doubling the dog population and the ensuing noise and waste generated by that population. The Kechi Comprehensive Plan identifies this land as suited for agricultural. A kennel of this current and proposed size is not a typical agricultural use, as defined in the Unified Zoning Code.
5. Impact of the proposed development on community facilities: With the increased number of dogs one could expect the amount traffic to and from the site to increase. Comments from the environmental Health Department in regards to the impact of the waste generated have not been received at this point.

The City of Kechi Planning Commission considered CON2001-00044 at their September 11, 2001 meeting. The Kechi Planning Commission moved to deny the Conditional Use; this motion was defeated with 2 members voting for denial and 3

against denial. The Kechi Planning Commission then moved to recommended approval of the Conditional Use request, per Staff's conditions A - K of the Staff report, with the following modifications; Remove condition I and adding the condition that all future expansion be only indoor kennels, where the dogs and/or puppies would be contained inside the kennels without outside access. This motion passed with 3 members voting for approval of the Conditional Use with the noted modifications to conditions A - K as noted and 2 members voting against approval of the Conditional Use and the proposed conditions with the noted modifications. There was one member of the public who spoke out against the Conditional Use and one member of the public who spoke for the Conditional Use per conditions and the modifications. The recommendation of the Environmental Health Department to not recommend expansion of the facility was not available at the time of the Kechi Planning Commission meeting.