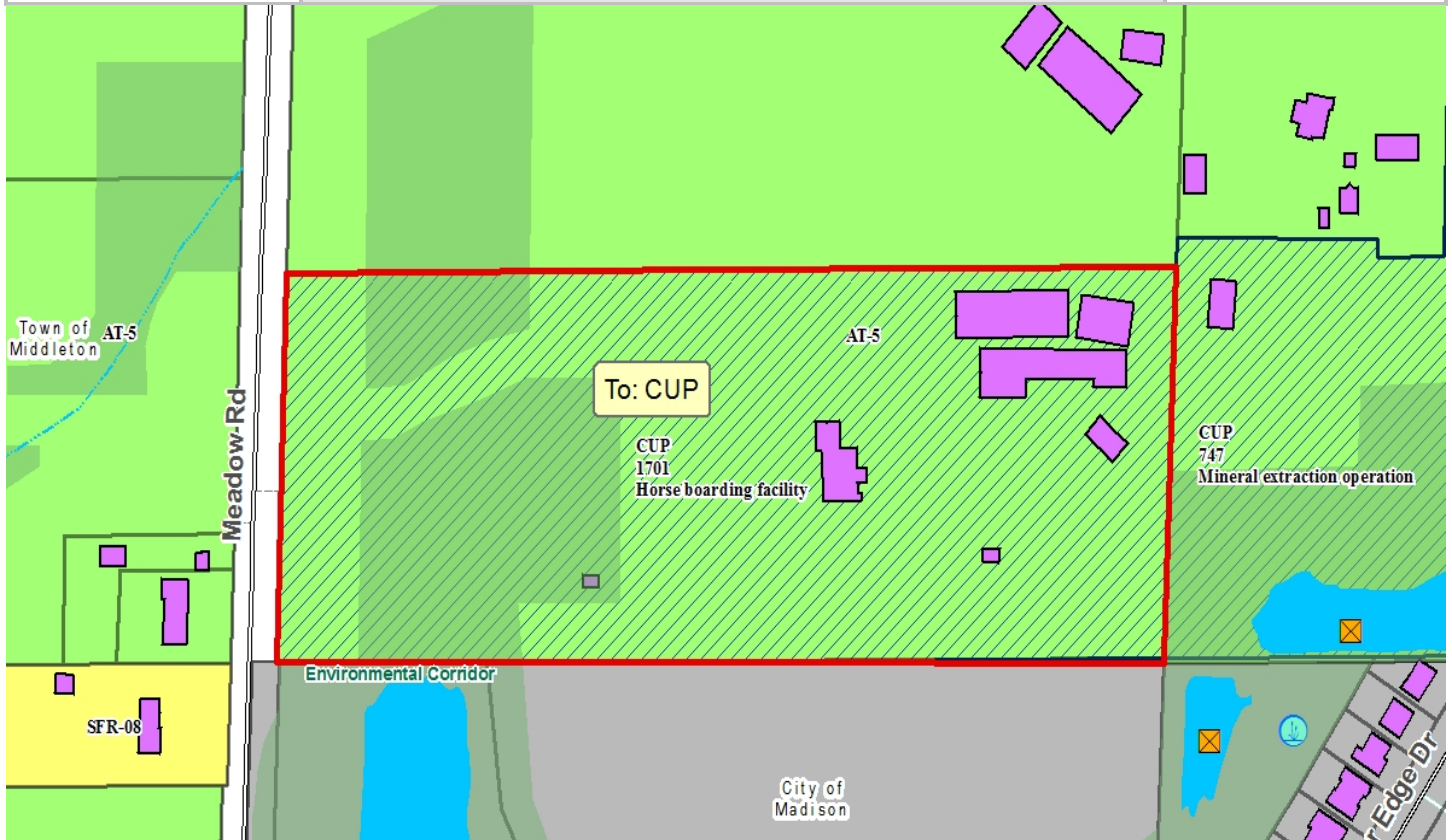


Staff Report  Zoning and Regulation Committee	<i>Public Hearing:</i> April 25, 2023	CUP 02591
	<i>Zoning Amendment Requested:</i> TO CUP: Small Animal Boarding Facility	<i>Town/Section:</i> MIDDLETON, Section 32
	<i>Size:</i> 15.2 Acres	<i>Survey Required:</i>
	<i>Reason for the request:</i> Small Animal Boarding Facility	<i>Applicant:</i> DAN AND MARLENE LA FLEUR
Withdrawn by Applicant		<i>Address:</i> 3440 MEADOW ROAD



Report updated 5/15/23

DESCRIPTION: The La Fleurs propose a Conditional Use Permit (CUP) to convert the current horse boarding stable to a small animal boarding facility. The proposal is for up to 400 dogs and may also include boarding of other small animals such as cats. The facility would offer daycare and overnight boarding, as well as optional grooming, training, and vet services (the latter from visiting veterinarians as is done for horse boarding).

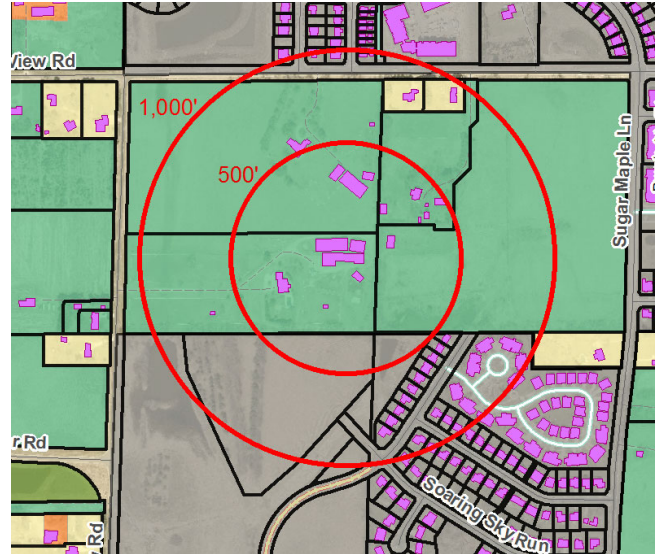
Specific aspects of the proposal include:

- Convert current 20,000 sf horse stall and arena building into small animal boarding by adding kennels, group play areas, and a 18'x102' outdoor fenced enclosure/dog run area (though animals would be mostly indoors). The smaller northeasterly building would be used for personal storage and horse boarding.
- Employees: 15 on site at a time
- Hours of operation: Mon-Sun 5:00am – 9:00pm (with daycare Mon-Fri and boarding 7 days/week, but boarding pickup and drop-off times on Fridays and Mondays mostly with minimal weekend pickups/drop-offs)
- Proposed phasing: total of 400 dogs in 101 kennels and 20 indoor play areas.
 - Phase 1 (pre-opening): 100 dogs in 34 kennels, 7 indoor play areas, and the outdoor play yard.
 - Phase 2 (in 5 years): 300 dogs in 67 kennels and 13 indoor play areas, converting the horse arena.

GENERAL OBSERVATIONS / FACTUAL INFORMATION: The property is a 15-acre parcel located southeast of the intersection of Valley View and Meadow Roads. The nearest homes are 385 ft away to the north and 240 ft to the northeast from the property (a similar distance to the proposed kennel building). The nearest home to the southeast is 295 ft from the property and 555 ft from the kennel (in the City of Madison). The nearest home to the west across Meadow Road is 130 ft from the property and 1,150 ft from the kennel. (See image below for approximate 500 and 1,000 ft distance buffers from the building.) Other lands adjacent to the south are vacant land owned by the City of Madison that contain stormwater drainage areas.

The current boundary between the Town of Middleton and the City of Madison is Meadow Road just south of the La Fleur property, and Valley View Road east of Meadow Road. Surrounding properties to the north, east and west are still in the Town. The lands to the east and south are in the Hawks Woods subdivision in Madison. This property is in a transition zone; Pioneer Road is the planned long-term town-city boundary by intergovernmental agreement.

Dan and Marlene La Fleur currently hold CUP 1701 for a horse boarding facility approved in 2001. The intent is for the family to run the dog boarding business. If this CUP is approved, they would convert the facility from horse to dog boarding. **The applicants originally indicated the current CUP 1701 would cease; but later clarified it would remain for one year if this CUP is approved, though the number of dogs allowed would inform how long they would continue to board horses for.**



The site is adjacent to a mineral extraction (topsoil removal) permit to the east (CUP #747) on the Froncek property, which is now inactive since the CUP approved in 1989 specified it was only for 5 to 8 years. The La Fleurs' horse boarding CUP included a manure management plan to spread manure on the Froncek property which at the time already had topsoil removed and was being replenished.

RESOURCE PROTECTION: The northwestern corner of the property is within the shoreland zone due to proximity to an intermittent stream located west of Meadow Road. In addition, resource protection corridors are mapped across the west end, reflecting an existing stormwater drainageway that extends north and south of the site. No concerns with regard to this proposal based on the use of existing buildings.

COMPREHENSIVE PLAN: The parcel is in the Town's Residential/Agricultural land use with some indication of Public Recreation on the west end of the property which reflects an existing drainage easement that runs north-south.

This parcel is also in the part of the transition area eventually destined to be part of the City of Madison.

New commercial uses are generally directed to, Mineral Point Rd. US 14 and appropriate town islands. Existing commercial uses are generally allowed to exist as long as there are no conflicts with neighboring land uses. There is recognition of local job creation for these uses. The plan also states that businesses may locate elsewhere as permitted by existing zoning and any other applicable county and town regulations. No direct policies permit or deny uses like this. (For questions about the town plan, contact Senior Planner Curt Kodl at (608) 266-4183 or kodl@countyofdane.com)

CONDITIONAL USE PERMIT DECISION MAKING: "Conditional uses" are those land uses which, because of unusual nature and potential for impacts on neighboring lands, public facilities, the environment or general welfare, warrant special consideration and review.

Prior to granting or denying a conditional use, the zoning committee shall make findings of fact based on evidence presented and issue a determination whether the proposed conditional use, with any recommended conditions, meets

all of the standards required to obtain a conditional use permit. The sections above include facts about the property and its surrounding context. Below is the list of the applicable standards from Section 10.101(7)(d) of the Zoning Code, and a summary of relevant facts including the applicants' testimony with regards to meeting the standards. Together these sections are intended to provide findings of fact that the Committee can use.

CUP Standards and Relevant Facts

1. That the establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or general welfare.

Staff notes that a large-scale dog kennel may potentially pose issues for safety and comfort due to traffic and noise. Applicants state this standard will be met since the 20,000 sf building is enclosed and is built to commercial building standards, and all animals will be housed in this building. The building plans and narrative state the building walls are 8 inches thick and insulated.

The applicants says the current driveway off of Meadow Road is long enough and provides turnaround areas for customer traffic. The driveway is also looped around the buildings. **The applicants would route traffic one-way around the buildings.** This would alleviate potential safety issues with traffic coming to and from the site, by providing ample space on site for queuing and maneuvering. **However, a 400-dog kennel may impact the comfort or general welfare of nearby neighbors due to noise (see comments under standard #2).**

2. That the uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by establishment, maintenance or operation of the conditional use.

Applicants state the proposed use will not impact adjacent neighboring properties, since the animals will be inside the insulated building and will not have access to the neighboring properties.

Staff notes that the potential nuisances most likely to arise from a dog kennel operation include noise from barking dogs and customer traffic. The surrounding lands have AT-5 and SFR-08 zoning (in the Town) and residential zoning (in the City), which permits agricultural and residential uses and other accessory or compatible uses. There are 2 homes located within 500 ft of the proposed kennel building, the nearest being 240 and 295 ft away. There appear to be at least 26 homes within 1,000 ft of the kennel building.

The plans propose 100 dogs in 34 kennels Phase 1, and 300 more dogs in 67 kennels in Phase 2, for a total of 400 dogs (or animals, including potential cats). The business plan ("Business Introduction" section) says each play area will have multiple kennels within them for rest times; additional clarification is needed on the number of kennels, and whether dogs would be individually housed or grouped in kennels. Applicants state the outdoor fenced dog run "would not be routinely used" but used weather-permitting, and for different dog play groups based on how they are organized by temperament. Proposed hours are 5:00am to 9:00pm, with dogs boarded overnight as well.

Regarding the potential for noise, much depends on the sound insulation provided by the 8-inch thick insulated walls and insulated ceiling/roof, and how many dogs are outdoors and for how long. The applicants might provide more information on whether indoor building or kennel materials will help mitigate noise. Staff has heard anecdotally that kennels can generate more noise when dogs are in kennel cages versus play areas – the La Fleur proposal includes several individual play areas, which allows the operator to move dogs and organize the play groups as needed. A review of other recently approved kennel CUPs (#2438, 2579, 2475, and 2467) found operations ranged from 40 to 200 dogs and with roughly 90 to 105 sf of building area (not play area) per dog; the LaFleurs propose 400 dogs and 50 sf of building per dog. However, a detailed floor plan analysis has not been done for these other sites. **Limits on outdoor dog activities (maximum number of dogs and more limited hours for outdoor play) may be necessary to meet this standard.**

3. That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.

Applicants state the facility will not impede the development and improvement of surrounding properties because the existing building meets Wisconsin commercial building standards and will continue to be professionally maintained.

This standard pertains to whether the proposed conditional use would affect *how the surrounding properties could be developed and improved, considering what they are currently zoned for*. The proposal would use existing buildings, with only modest internal modifications, the addition of an outdoor dog run, and (if necessary) minor expansion to existing parking and driveway areas. This would not appear to impede the development of surrounding properties. Staff reached out to City of Madison staff due to the Town-City boundary agreement; City staff confirmed they see no need to comment on this proposal.

Animal boarding is generally compatible with agricultural use, as demonstrated by the horse boarding operation that has existed on site for many years. The zoning on adjacent lands allows agricultural use, ag-related uses, and additional residential development within the limits of the town's density policies. AT-5 zoning also allows other land uses with approval of a CUP (e.g. day cares, limited family businesses, large animal boarding). All of these uses may be compatible with a dog kennel; however much depends on the scale of the kennel since the noise and traffic levels directly relate to the number of dogs and vehicles. As noted above, this area is planned for future residential and agricultural use (as long as it remains in the town), and residential use at higher densities (as lands go into City of Madison jurisdiction). While a kennel business may not impede the development of these lands, it could impact the desirability of the adjacent lands for new residential use. **As noted above, the noise generated by a 400-dog kennel may have potential impacts on neighboring residential uses, compared to a smaller-scale kennel.**

4. *That adequate utilities, access roads, drainage and other necessary site improvements have been or are being made.*

The applicants propose to use the existing driveway, as well as the existing water well and septic system. They indicate there is a separate septic system for the barn and home, and that the barn already has an employee breakroom, bathroom and wash rack. There is already an enclosed animal waste area in the facility that would be used for odor management and sanitation; an additional dumpster would be added to this space.

Applicants have previously secured stormwater management and erosion control permits for the existing site improvements. Any non-residential development with over 4,000 SF of disturbance requires an erosion control permit and the creation of over 20,000 SF of impervious surface requires a stormwater management permit from Dane County Land and Water Resources, so if the site improvements exceed these thresholds new permits will be required. This is addressed with standard conditions of approval and zoning permit requirements.

The minimum parking standard for animal boarding is based on the number of employees and the building size. Requiring one-way access around the back of the buildings would help mitigate the potential for congestion. **However, upon further review the parking plan (revised plan received 4/17/23) is not adequate for the proposed use to meet zoning code parking plan requirements, based on the need for minimum 20' drive aisles for parking lots with one-way traffic flows (the back driveway shows 16'), and the fact that the parking must accommodate up to 15 employees plus all of the customers (for up to 400 dogs) during peak times. Initially the applicants stated that no driveway improvements or additional pavement would be needed; however it appears based on the parking plan aerial photos that some pavement extensions would be necessary. Staff believes the entire driveway and parking areas should specify a hard-paved surface and striped parking stalls in all areas, to provide clearly-designated areas for customers based on the intensity of the proposed use. This has been discussed with the applicants; they are in agreement and are contacting Land and Water Resources staff to confirm any permit requirements associated with the minor driveway/parking lot improvements.**

5. *That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.*

Applicants propose to use the existing driveway that extends from Meadow Road and loops around the building to provide vehicle access around all sides of the facility. They propose **44 on-site parking spaces** on the existing asphalt and gravel areas. In addition, they propose to establish scheduled pickup and dropoff times for customers who would drive into the site at designated times, to maintain traffic flow through the site and minimizing the need for most customers to park in parking stalls.

County Highway Department said there is not enough information to estimate traffic projections; however, they note that if there were 50 dogs the estimated traffic would be 200 trips per day due to the proposed use. The

applicants state that the current business has brought hundreds of vehicles **per day** without issue, including semi-trucks and horse trailers so the site can accommodate larger vehicles.

Discussion of the proposed parking and circulation plan has been updated and moved to #4 above, though the parking plan arguably relates to both standard #4 and #5.

6. That the conditional use shall conform to all applicable regulations of the district in which it is located.

The proposed use conforms to the applicable regulations of the AT-5 zoning district. Applicants note that the business will be inside the existing building. While this does not directly address the AT-5 district standards, the existing improvements on site meet the standards (no violations known). AT-5 zoning allows domestic pet animal boarding with approval of a CUP, provided the lot is at least 5 acres; the 15-acre parcel meets this.

Staff's primary concern is, at what scale is dog boarding compatible with the purpose and intent of the AT-5 zoning district. The purpose of the AT-5 district is to accommodate a mix of agricultural, open space, and residential uses in areas planned for future development, among other things. The permitted land uses in AT-5 are residential and agricultural in nature, nothing that is primarily "commercial". Conditional uses allowed in AT-5 generally include uses that would be *accessory to a residential or agricultural use*. A 400-dog kennel may be large enough that the property's use could be considered more commercial in nature, even with a home on site. **However, a smaller kennel may be compatible with AT-5 zoning depending on the proposal. For example, Dane County has approved at least one other kennel with AT-5 zoning, [CUP 2438](#) in Burke, for up to 160 pets (while including pet daycare) or 200 pets (if overnight stays only no daycare).**

For signage, the applicants want to replace the existing ground sign near the driveway. Zoning code allows one ground sign under 8 ft in height based on the AT-5 zoning. Any new or modified signage requires a sign permit.

7. That the conditional use is consistent with the adopted town and county comprehensive plans.

As noted above, the proposed use is generally consistent with the comprehensive plans because the town plan does not contain policies that explicitly permit or prohibit this type of use, and the plan allows businesses to locate throughout the town where permitted by the existing zoning and other applicable county or town regulations. This property has contained a large-scale horse boarding business for years and the AT-5 zoning would allow the proposed use if the CUP is approved. See comments above under standard #6.

8. If the conditional use is located in a Farmland Preservation Zoning district, the town board and zoning committee must also make the findings described in s. 10.220(1).

Not applicable.

POTENTIAL NUISANCES ASSOCIATED WITH THE CONDITIONAL USE: The potential nuisances that typically pertain to pet animal boarding involve noise, vehicle traffic, and animal waste management. The applicants have submitted information as part of their application on how those potential nuisances are handled; most of this is described in the section above.

Under Zoning Code section 10.103(5), there are special requirements for domestic pet animal boarding operations that are intended to address the potential conflicts with the land use activity. These are not required as CUP "conditions" for the permit, unless the Town or ZLR Committee wishes to impose conditions on the operation based on these. See below for staff comments on each requirement:

(a) Use shall be enclosed by a fence or other suitable enclosure to prevent animals from leaving the site.

The proposed kennel would operate within an enclosed building and an 18'x102' fenced enclosure and would thus meet this standard.

(b) Each animal shall be provided with an indoor containment area if the use is located within 500 feet of an existing residence or any lot in the Single Family Residential, Two-Family Residential, Multi-Family Residential, Rural Residential or Hamlet districts.

The proposed kennel is within 500 feet of two existing residences, though the homes do not have the zoning districts listed in this requirement. However, the kennel proposal provides indoor containment areas.

(c) Each animal shall be provided with adequate exercise space

The kennel provides exercise space in multiple separate play areas, intended for use by the animals who would be organized into play groups. The plans propose 29 sf of indoor play space per animal based on 400 dogs. Phase 1 plans propose 27 sf of play space per animal based on 100 dogs. In addition, all dogs would have access to the 18'x102' (1,836 sf) outdoor play area on a rotating basis. Whether this is "adequate" is up to interpretation. As noted above, a cursory analysis was done to compare building space per dog across some recent CUPs; however a more detailed analysis of play areas was not possible. One resource from the [USDA](#) suggests the minimum amount of exercise space needed for dogs depends on the dog size and whether the dogs are housed singly or in group kennels. If singly-housed they generally need double the amount of floor space required to house the dog.

(d) Applicant shall submit a manure management plan.

The manure management plan entails collecting it in waste containers stored in an enclosed area inside the building, and having it hauled away by a waste management company. This is typical of pet boarding operations.

(e) At their discretion, and where necessary to minimize impacts to neighboring properties, the town board and zoning committee may:

- 1. impose noise limits under s. 10.102(6),**
- 2. require visual screening, consistent with s. 10.102(12), and/or;**
- 3. establish hours where animals must be kept indoors.**

The applicants should clarify how much of the day the outdoor play area would be used by groups of dogs, if dogs might be outdoors throughout the 5:00am-9:00pm operating hours. Limiting outdoor play hours would be appropriate given the surrounding neighborhood character. Decibel level limits could be set by the CUP conditions; however enforcement of decibel-based noise restrictions can be difficult in real time and involve the Sherriff taking measurements on site to investigate a complaint.

(f) The committee and town board will impose limits on the total number of animals that may be present at any one time, as appropriate to the site and neighboring land uses.

It may be appropriate to limit the number of dogs to fewer, at least initially, based on the surrounding land uses and this property's current and future planned land use being agricultural and residential in nature. In addition, it may make sense to limit the pet grooming/training and veterinary services to customers who board animals here, to limit the traffic generated by the kennel business.

Potential conditions of approval specific to this CUP can be developed after public input and deliberation by the ZLR Committee. Common topics include but are not limited to capping the number of animals boarded, hours of operation, site access, and manure management. The CUP conditions could also require the owners to get the permit renewed after one year or some other period of time, so that the Town and County can assess the compatibility of the operation and its potential expansion with the surrounding area (which is in a state of transition), and also assess the suitability of particular CUP conditions.

TOWN ACTION (as of 4/25/23): Pending (early May).

STAFF RECOMMENDATION (as of 4/25/23): Staff recommends postponement at this time, due to no town action. The applicants have already been to the Town Plan Commission and will go to the Town Board in May.

Staff finds the applicants have provided much information intended to mitigate the potential for nuisances; however we recommend they provide more information on: their expectations for outdoor playtime hours, the number of kennels indoors (in play areas and in total), whether indoor building or kennel materials will help mitigate noise, and how they propose to manage customer traffic. In addition, they should address whether the types of conditions suggested by staff would be acceptable, to ensure the proposal meets all of the 8 required standards for CUP approval.

APRIL 25TH ZLR MEETING: In April the ZLR Committee held a public hearing on the proposal. No one other than the applicants were present, and the County received no comments in opposition. The ZLR Committee postponed action on the CUP to allow time for town action.

TOWN ACTION (updated 5/12/23): On May 8th, the Town Board voted on the proposed CUP with a 2-2 vote, so it did not pass.

STAFF UPDATE: As noted above in the initial staff report and recommendations, staff has been concerned that the proposal does not meet all of the CUP standards and we requested additional information from the applicants. They responded to confirm the number of kennels, provided a revised parking plan with more detail and more parking stalls (from 36 to 44, the same plan that was presented to the Town Plan Commission), and clarified there would be one-way vehicle routing and scheduled, staggered customer pickup/dropoff times. They have also provided sufficient information on the building (8" thick walls, 17" insulated ceiling, and climate-controlled) to address the concern of noise from inside the building.

However, prior to the public hearing process the applicants did not reduce the total number of dogs proposed for the facility, propose specific hours for outdoor dog playtime, or provide a maximum number of dogs to be outdoors at a time – all of which were suggested in order to address the concerns about noise and compatibility with the neighborhood and the property's AT-5 zoning. In lieu of applicants offering these adjustments, a town approval with conditions establishing limits on these would be sufficient to address the concerns. However, as it stands today staff finds that the proposal fails to meet the CUP standards for the following reasons:

1. A 400-dog kennel is not compatible with the surrounding neighborhood character, being too commercial in nature and with a high likelihood of impacting neighboring properties with noise and traffic during peak customer pickup/dropoff times. A kennel this size would likely impact surrounding properties – both their current use and also their potential use under their residential and agricultural zoning – because the noise and traffic generated directly relates to the number of dogs on site. This does not satisfy **CUP standard #1** (not being detrimental to public health, safety, *comfort or general welfare*) and **CUP standard #3** (not impeding normal and orderly development of surrounding properties). It also does not satisfy **CUP standard #6** (the need to conform to the applicable zoning district regulations) because at 400 dogs the kennel would be more of a large-scale commercial business than a small-scale business that is *accessory to the property's residential or agricultural use*, which conflicts with the purpose and intent of the AT-5 zoning district.

Staff notes that the applicants did not modify their proposal to reduce the number of dogs, even after the Town Plan Commission indicated they could support the proposal with up to 100 dogs. While the La Fleurs have since indicated they could reduce the number, they did not reduce it to match the Plan Commission's 100-dog recommendation, and in any case the Town Board's action makes this a moot point.

2. A lack of clear limits on outdoor dog play times, and how many dogs would be outdoors at a time – with no proposal for more limited hours than the 5:00am-9:00pm overall operating hours, this does not satisfy **CUP standard #2** (not impairing or diminishing the uses, values and enjoyment of surrounding properties) because the potential for noise impacts remains a concern.
3. The proposal lacks a more detailed parking plan, with hard paving on the entire driveway and parking area, and a basic-level engineering analysis done to confirm that the proposed facility can be adequately served by the existing drainage facilities. The applicants indicate that no improvements are necessary; however this does not seem to match the site plans provided. Without a clear intent to expand the driveway and repave to eliminate dust, this does not satisfy **CUP standard #4** (the need for adequate utilities, access, drainage and other site improvements) without additional information to demonstrate how this would be met.

By ordinance, the zoning committee must deny a conditional use permit if it finds that the standards for approval are not met. The zoning committee must approve a conditional use permit if it finds that the standards for approval are met. County Staff has prepared for consideration and possible adoption by the ZLR Committee the above findings for denial of CUP 2591. If the CUP is denied, the applicants may resubmit a different CUP proposal if they so choose.

Any questions about this petition or staff report please contact Rachel Holloway at (608) 266-9084 or holloway.rachel@countyofdane.com