

**COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO**

PERLA MEDINA-KINNE, et al.,	:	
Plaintiffs/Appellants	:	CASE NOS. 2013 CVF 000962 2013 CVF 001307
vs.	:	
VILLAGE OF NEW RICHMOND, OHIO BOARD OF ZONING APPEALS	:	Judge McBride
Defendant/Appellee	:	DECISION/ENTRY
	:	

Strauss Troy Co., L.P.A., Joseph Braun, counsel for the plaintiffs/appellants Perla Medina-Kinne, Michael Kinne, and Michael S. Kinne Trust, The Federal Reserve Building, 150 East Fourth Street, Cincinnati, Ohio 45202-4018.

Faris & Faris, Matthew V. Faris, counsel for the defendant/appellee Village of New Richmond, Ohio Board of Zoning Appeals, 40 S. Third Street, Batavia, Ohio 45103.

John Woliver, counsel for the Intervenor Edgar Duncan, Melanie Duncan, James R. Adams, Leah S. Adams, Roger Buehler, Cheryl Buehler, Linda Hillgrove, Richard Hillgrove, Anthony Cunningham, Patricia J. Cunningham, Deborah Kern, Karl Kern, Dean Pringle, Sheila Pringle, and Linda Buehler, 204 North Street, Batavia, Ohio 45103.

This cause is before the court in case number 2013 CVF 000962 on appeal from the decision of the Village of New Richmond, Ohio Board of Zoning Appeals rendered on May 21, 2013 finding (i) that the appellants need a zoning permit for the activity being conducted on their property and (ii) that appellants are improperly operating a

business in an R-2 Residential Zone. This cause is also before the court in case number 2013 CVF 001307 on appeal from the decision of the Village of New Richmond, Ohio Board of Zoning Appeals rendered on August 7, 2013, denying the appellants a permit for a home occupation pursuant to Section 237 of the New Richmond Zoning Ordinance.

The court entered a briefing schedule in this matter and indicated therein that any party could request oral argument by notifying the court of said request by January 24, 2014. No party requested oral argument and, as such, this matter was submitted on the briefs as of January 24, 2014.

Upon consideration of the record of the proceeding, the evidence presented for the court's consideration, the written arguments of counsel, and the applicable law, the court now renders this written decision.

FACTS OF THE CASE AND PROCEDURAL BACKGROUND

Plaintiff/Appellant Michael S. Kinne Trust is the owner of the real property located at 2477 Country Place and 2479 Country Place, New Richmond, Clermont County, Ohio. At the time that the property was purchased in September 2005, the property was legally identified as 2477 A & B Country Place.¹ In 2006, plaintiff/appellant Michael Kinne requested a separate address for the "B" parcel and that parcel was given the

¹ Transcript of the Proceeding from August 7, 2013 at pg. 22. The court notes for the record that pages 26 and 27 appear to have be inadvertently omitted from the transcript filed with the court. However, those pages are included in the copy of the transcript provided in the Exhibit Index of Transcript filed September 30, 2013, Exhibit C.

address of 2479 Country Place.² Plaintiffs/Appellants Perla Medina-Kinne and Michael Kinne reside at a home located at 2477 Country Place.³

On August 28, 1989, prior to the appellants' purchase of the subject property, Michael Scott, the then-owner of the property, was issued Zoning Permit No. 1157 by the Village of New Richmond which allowed for the construction of a 1,600 square-foot storage building on the property.⁴ Beginning in mid-2009 until the present day, Perla Medina-Kinne and Michael Kinne have operated Angel's Rest Animal Sanctuary (hereinafter referred to as "ARAS") out of that storage building on the property now commonly known as 2479 Country Place.⁵ ARAS houses animals that are rehabilitated and cared for on the property and those animals are then either adopted or they live out their days at ARAS.⁶ Some of the money to run and operate ARAS comes from the appellants and the rest of the money comes from donations.⁷ ARAS has been designated as a 501(C)(3) nonprofit organization by the Internal Revenue Service as of October 2010.⁸

In June 2012, Perla Medina-Kinne asked David Kennedy, the then acting Zoning Administrator, if they needed a permit for their operation of the animal sanctuary. David Kennedy informed the appellants via e-mail that there was no requirement for a permit and he informed them of the definition of a home occupation.⁹ Mr. Kennedy also noted in that email that "[s]ince I do not know how your operation functions, it is difficult

² Id. at pgs. 22-23.

³ Id. at pgs. 19-20.

⁴ Exhibit Index of Transcript, filed September 30, 2013, Exhibit D-1.

⁵ Transcript of the Proceeding from May 21, 2013 at pgs. 23-24.

⁶ Id. at pg. 24.

⁷ Id. at pgs. 24-25.

⁸ Id. at pgs. 25-26.

⁹ Id. at pgs. 21-22 and Exhibit Index of Transcript, Exhibit D-2.

to say if these conditions are being met.”¹⁰ At some time thereafter, the zoning ordinance was revised to add a requirement for a permit for a home occupation.¹¹

On January 28, 2013, a letter and petition were both sent to Jim Taylor, the Zoning Inspector for the Village of New Richmond, from numerous residents of Country Place complaining about the operation of the animal sanctuary on their street and requesting that village officials require that the appellants’ property be brought into compliance with existing zoning codes.¹² Thereafter, on March 12, 2013, Jim Taylor sent a letter to Perla Medina-Kinne informing her that “it was found that the property is in violation of the Zoning Ordinance of the Village of New Richmond: No zoning permit was obtained prior to the opening of the ARAS Kennel at the location that is now labeled 2479 Country Place and operating a business in a R-2 Residential Zone.”¹³ This letter informed Ms. Medina-Kinne that she had twenty days to bring the property in compliance with the Zoning Ordinance.¹⁴ Two days later, an additional letter was sent to Ms. Medina-Kinne from Jim Taylor informing her of her right to appeal to the Board of Zoning Appeals.¹⁵

On April 26, 2013, Perla Medina-Kinne, on behalf of the Michael S. Kinne Trust which is the titled owner of the subject property, filed an Application for Zoning & Floodplain Development Permit with the Village of New Richmond requesting a home occupation permit for 2477 Country Place.¹⁶ Jim Taylor sent Ms. Medina-Kinne a letter

¹⁰ Exhibit Index of Transcript, Exhibit D-2.

¹¹ Transcript of the Proceeding from May 21, 2013 at pg. 22.

¹² Exhibit Index of Transcript, Exhibit D-3.

¹³ Id., Exhibit D-4.

¹⁴ Id.

¹⁵ Id., Exhibit D-5.

¹⁶ Id., Exhibit D-7.

on May 9, 2013, notifying her that the application was denied and informing her of her option to appeal to the Board of Zoning Appeals.¹⁷

On May 21, 2013, the Village of New Richmond Board of Zoning Appeals heard the appeal of Jim Taylor's finding that the subject property was not in compliance with the zoning ordinance. The members present at that meeting were James Hempfling, Charles Scott, Mary Mark, Doni Findlan, and William Marsh.¹⁸ William Marsh recused himself from hearing the case because he is a neighbor of the appellants.¹⁹

Testimony was presented from Perla Medina-Kinne as well as several neighbors from Country Place. At the conclusion of the hearing, the Board of Zoning Appeals voted unanimously to uphold the decision of the Zoning Inspector, finding that "[n]o zoning permit was obtained prior to the operation of the ARS (*sic*) kennel at the location that is now labeled 2479 Country Place and operated as a business in an R-2 zone."²⁰ Specifically, the voting board members were Charles Scott, Mary Mark, Doni Findlan, and James Hempfling.²¹

Thereafter, on August 7, 2013, the Board of Zoning Appeals heard the appeal of the denial of Ms. Medina-Kinne's application for a home occupation permit. Testimony was presented to the board from Michael Kinne during which he denied that ARAS has any employees and explained that ARAS has volunteers that assist in caring for the animals.²² He stated that "[m]aybe five out of seven days" more than one volunteer comes to the property.²³ These independent contractors feed, groom, clean, and

¹⁷ Id., Exhibit D-8.

¹⁸ Transcript of the Proceeding from May 21, 2013 at pg. 4.

¹⁹ Id. at pg. 5.

²⁰ Id. at pgs. 42-44.

²¹ Id. at pg. 40.

²² Transcript of the Proceeding from August 7, 2013 at pgs. 20-21.

²³ Id. at pg. 25.

generally provide overall care for the animals.²⁴ The Kinnes tell these contractors what services they want performed, such as bathing the animals, although Mr. Kinne testified they do not tell them how or when to perform this service.²⁵ These contractors report to the Kinnes the number of hours that they have worked so that they can be paid.²⁶

During the questioning of Mr. Kinne, counsel for the Intervenors presented a copy of a posting on Craigslist advertising for an open position at ARAS.²⁷ Mr. Kinne identified this posting as an advertisement ARAS placed.²⁸ This advertisement, entitled “Kennel Tech for Animal Sanctuary Needed, New Richmond, Ohio[,]” indicated an hourly wage of \$7.50 and stated that the position was as an independent contractor.²⁹

Mr. Kinne also denied having daily walk-in traffic at the property.³⁰ The Board heard the testimony of several neighbors, including Carl Kern, who testified that he used to see vehicles going to the property at 9:00 in the morning and that he no longer goes outside at that time of the day.³¹ He stated that he still hears loud muffler noises and spinning tires “just about every day.”³² Another neighbor, Anthony Cunningham, testified that he called the Kinnes last year and left a voicemail message about traffic that was coming up his driveway “constantly,” looking for the animal sanctuary, to the point where he had a sign made and placed at the end of his driveway indicating his property was not an animal sanctuary and to keep out.³³ Mr. Cunningham also testified that, the previous summer and winter, there was parking on the street to the point that the mail

²⁴ Id. at pg. 30.

²⁵ Id. at pg. 31.

²⁶ Id.

²⁷ Id. at pg. 37.

²⁸ Id. at pg. 38.

²⁹ Id.

³⁰ Id. at pg. 21.

³¹ Id. at pg. 51.

³² Id.

³³ Id. at pgs. 54-55.

carrier could not get to his mailbox and that he sees people coming and going from the Kinnes' property all the time.³⁴

At the conclusion of the evidence and after an executive session, the Board voted unanimously to deny the appeal.³⁵ The Board noted that “the actual housing of the animals is at 2479 Country Place, which is a separate lot” from the lot on which the appellants' home is located, which is at 2477 Country Place.³⁶ The Board found that “2479 cannot have a home occupation permit because there is no residence.”³⁷ The Board further found that “[v]olunteers are still considered employees” and that the ARAS volunteers do cause daily traffic to and from the site, which is contrary to the zoning ordinance.³⁸ The Board noted that more than one person is being employed and that there was an advertisement for ARAS for a kennel tech who was to be paid an hourly wage.³⁹

The appellants now appeal both decisions by the Board of Zoning Appeals to this court.

STANDARD OF REVIEW

Pursuant to R.C. 2506.04:

“If an appeal is taken in relation to a final order, adjudication, or decision covered by division (A) of section 2506.01 of the Revised Code, the court may find that the order, adjudication, or decision is unconstitutional, illegal, arbitrary,

³⁴ Id. at pg. 58.

³⁵ Id. at pg. 80.

³⁶ Id. at pg. 77.

³⁷ Id.

³⁸ Id. at pg. 78.

³⁹ Id. at pg. 79.

capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record. Consistent with its findings, the court may affirm, reverse, vacate, or modify the order, adjudication, or decision, or remand the cause to the officer or body appealed from with instructions to enter an order, adjudication, or decision consistent with the findings or opinion of the court. The judgment of the court may be appealed by any party on questions of law as provided in the Rules of Appellate Procedure and, to the extent not in conflict with those rules, Chapter 2505. of the Revised Code.”

“ ‘A common pleas court reviewing an administrative appeal pursuant to R.C. 2506.04 weighs the evidence in the whole record and determines whether the administrative order is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of the substantial, reliable, and probative evidence.’ ”⁴⁰ “In reviewing an administrative decision, a court is bound by the nature of administrative proceedings to presume that the decision of the administrative agency is reasonable and valid.”⁴¹ “Common pleas courts evaluating the decision of an administrative body must weigh the evidence in the record in order to determine whether there is a preponderance of reliable, probative, and substantial evidence supporting the decision, but the reviewing court should not substitute its judgment for that of the agency.”⁴²

LEGAL ANALYSIS

⁴⁰ *Hutchinson v. Wayne Twp. Bd. of Zoning Appeals* (Sept. 10, 2012), 12th Dist. Butler No. CA2012-02-032, 2012-Ohio-4103, ¶ 14, quoting *Key-Ads, Inc. v. Bd. of Cty. Commrs.* (March 31, 2008), 12th Dist. Warren No. CA2007-06-085, 2008-Ohio-1474, ¶ 7.

⁴¹ *Taylor v. Wayne Twp. Bd. of Trustees* (Jan. 20, 2009), 12th Dist. Butler No. CA2008-02-032, 2009-Ohio-193, ¶ 9, citing *Community Concerned Citizens, Inc. v. Union Twp. Bd. of Zoning Appeals*, 66 Ohio St.3d 452, 456, 613 N.E.2d 580, 1993-Ohio-115.

⁴² *Id.*, citing *Community Concerned Citizens*, *supra*; and *Kisil v. City of Sandusky*, 12 Ohio St.3d 30, 34, 465 N.E.2d 848 (1984).

I. MAY 21, 2013 DECISION OF THE BOARD

Pursuant to Article 9, Section 901(7) of the Village of New Richmond Zoning Ordinance, a building or premises zoned R-2 Residential District may be used for a Home Occupation (as defined in Section 237), so long as a permit is obtained.⁴³

Section 237 sets forth the following definition of “Home Occupation”:

“Any occupation or profession carried on by a member of the immediate family, residing on the premises, in connection with which there is; no sign other than a name plate not more than three (3) square feet in surface area and only one (1) non-family member may be employed; no display indicating from the exterior that the building is being utilized for any purpose other than that of a dwelling; no product is sold upon the premises; and no mechanical equipment is used except such as is customary for domestic or household purposes. Home occupations shall not include barbershops, beauty shops, shoe repair or any other shop where daily walk in traffic or vehicle parking is expected. Internet sales from a residential property are permitted provided pickup or delivery of merchandise takes place less than daily.”⁴⁴

At the May 21st hearing, counsel for the appellants acknowledged that the appellants need a home occupation permit to engage in the conduct that is taking place at the subject property.⁴⁵ Furthermore, as set forth above, the zoning ordinance is clear that a permit is required for a home occupation use of a premises located in an R-2 Residential District. As such, the Board’s conclusion that the appellants do need a zoning permit for the activity conducted on the premises is well-founded.

⁴³ Exhibit Index of Transcript, Exhibit A.

⁴⁴ Id.

⁴⁵ Transcript of the Proceeding from May 21, 2013 at pg.

The other finding made by the Board of Zoning Appeals on May 21, 2013 was that the decision of the Zoning Inspector that the appellants are operating a business in an R-2 residential zone was supported by the evidence. With the admission by the appellants that a home occupation permit is required for the subject premises, this issue is essentially rendered moot. Whether the appellants are operating a “business” or a “non-profit organization” on the subject premises is irrelevant to the finding that the appellants need a permit to conduct the activity at issue and never obtained one. The issue of whether a home occupation permit should have been issued will be addressed below.

However, the court will note that Board heard evidence at the May hearing from Ms. Kinne about ARAS and some of the activities conducted on the premises, including that Ms. Kinne houses and rehabilitates animals therein that are not her pets, that she solicits donations for the animal sanctuary, and that ARAS has been designated as a 501(C)(3) nonprofit organization for tax purposes. This evidence was sufficient to find that the appellants were operating a business out of the storage building and, as such, were in violation of the zoning code. This evidence is also sufficient to support a finding that the activity conducted on the property would not qualify as an “accessory use” under Section 901(3) of the Zoning Code, as that section states that accessory uses “shall not involve the conduct of any business, trade or industry * * *.”⁴⁶

The only argument specifically directed to the May 21st finding of the Board by the appellants in their appeal brief is the argument that the board lacked a proper quorum to hear the appeal. As set forth above, the members present at that meeting

⁴⁶ Exhibit Index of Transcript, Exhibit A.

were James Hempfling, Charles Scott, Mary Mark, Doni Findlan, and William Marsh.⁴⁷ William Marsh recused himself from hearing the case because he is a neighbor of the appellants.⁴⁸

Section 507 of the Zoning Ordinance states that “[a] minimum of four (4) members of the board is required for a hearing to be held on the established date.”⁴⁹

During the May 21st hearing, Michael Findlan, the husband of Board member Doni Findlan, gave the following testimony:

“I’m Michael Findland (*sic*). I’m the Planning Commission Chairman. And this is addressed to the Board of Zoning Appeals. Something for you to consider is what I perceive as you’re looking at these people own two properties. One is a residence that is occupied by them. The other is what was considered a storage building. And the home occupation is now being run, as I perceive it, in the residence. That’s just an observation I’m making that you should consider.”⁵⁰

This was the only comment made by Michael Findlan at the hearing. The appellants argue that Doni Findlan should have recused herself once her husband offered testimony on this matter and, had she done so, only three members would have remained and a quorum would not have been present.

First, the court notes that counsel for the appellants did not object to either Michael Findlan’s testimony before or after it occurred, nor to Doni Findlan continuing to hear the appeal thereafter.

Furthermore, reading Michael Findlan’s comments, they are somewhat confusing as he states that “the home occupation is now being run, as I perceive it, in the residence.” However, the home occupation at issue was not being run in the residence

⁴⁷ Transcript of the Proceeding from May 21, 2013 at pg. 4.

⁴⁸ *Id.* at pg. 5.

⁴⁹ Exhibit Index of Transcript, Exhibit A.

⁵⁰ Transcript of the Proceeding from May 21, 2013 at pgs. 38-39.

and was instead being run out of the storage unit. Mr. Findlan also makes a comment that the appellants own two properties, which is a reiteration of the finding of the Zoning Inspector in the denial of their home occupation permit.

Therefore, the court finds that any error that occurred as a result of Doni Findlan failing to recuse herself was harmless error. Regardless of what the Board chose to find on May 21st regarding whether the property at issue constitutes two parcels or one parcel, the fact remained that a permit was required for the activity taking place at the subject property, a point conceded by appellant's counsel and a topic not discussed by Michael Findlan.

The court finds that the decision of the Village of New Richmond Board of Zoning Appeals rendered on May 21, 2013 is not unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of the substantial, reliable, and probative evidence. As such, that decision shall be affirmed.

II. AUGUST 7, 2013 DECISION OF THE BOARD

The appellants first argue that the Board's decision was arbitrary and contrary to the substantial and reliable evidence presented because there was no evidence presented that there is daily walk-in traffic at the property.

On this point, the court must agree. While, as noted above, there was a great deal of testimony presented that there are people going to and from the appellants' property *almost* every day of the week, there was no testimony that this court can find which stated that traffic was, in fact, daily. The Board did not explain its finding that

“[t]he volunteers do consist of daily traffic to and from the site * * * [;]”⁵¹ and this court cannot find that the traffic of the volunteers and other workers occurred on a daily basis. As such, the court cannot find that the traffic to and from the appellants’ property would prevent them from obtaining a home occupation permit.

The appellants’ next argument is that the Board’s decision was arbitrary and contrary to the substantial and reliable evidence presented because there was no evidence presented that the appellants have employees at the animal sanctuary.

As noted above, Section 237 of the Zoning Ordinance states that “only one (1) non-family member may be employed” to meet the definition of a home occupation. The board found that the volunteers at ARAS are employees.

The term “employed” is not defined in the zoning ordinance. Section 201 of the Zoning Ordinance states that “[t]erms and words that are not defined in this Article shall be interpreted in accordance with their ordinary usage.”⁵²

“Employ,” as it would pertain to the present case, is defined as “to provide a job that pays wages or a salary.”⁵³ “Wage” is defined as “a payment usually of money for labor or services usually according to contract and on an hourly, daily or piecework basis.”⁵⁴

While the Board stated in its findings of fact that “volunteers fits the dictionary definition of employed[,]”⁵⁵ the court cannot find that conclusion to be correct. The term volunteer by its very definition implies that no salary or wages were received in return

⁵¹ Transcript of the Proceeding from August 7, 2013 at pg. 78.

⁵² Exhibit Index of Transcript, Exhibit A. See also, *Sammons v. Village of Batavia*, 53 Ohio App.3d 87, 557 N.E.2d 1246 (12th Dist., 1988), paragraph one of the syllabus.

⁵³ Merriam Webster’s Collegiate Dictionary, Tenth Edition (1997), 379.

⁵⁴ Id. at pg. 1327.

⁵⁵ Transcript of the Proceeding from August 7, 2013 at pg. 79.

for the services provided. If the Village of New Richmond wishes to include volunteers in that portion of its definition of home occupation, it will need to revise the zoning ordinance to do so.

However, the Board also mentions in its findings of fact that ARAS previously advertised for a kennel tech and said advertisement included an hourly wage of \$7.50/per hour. The court would note that this advertisement has been challenged on appeal as improper evidence as the appellants argue that this evidence was introduced by Board member Charles Scott. However, this advertisement was not introduced by Mr. Scott but was instead introduced by counsel for the intervenors, who requested that Michael Kinne identify this document and explain its import.⁵⁶ Since this document was used in cross examination by counsel for the intervenors and was identified by one of the appellants, the Board's consideration of the advertisement was not improper.

The Board also heard testimony from Michael Kinne that ARAS currently has independent contractors who provide care for the animals and that they provide the appellants with a report of their hours worked and receive payment for those hours. During the hearing before the Board, Michael Kinne testified that there are four or five independent contractors who have worked at the property in the past year and these are the individuals who are paid an hourly amount.⁵⁷ While the Board used the word volunteer, it was clearly also referring to and discussing the "independent contractors" who work on the property.

⁵⁶ Id. at pgs. 36-40.

⁵⁷ Id. at pg. 28.

In support of their appeal, the appellants cite to several cases which discuss the distinction between employees and independent contractors.⁵⁸ The distinction between employees and independent contractors is discussed often in Ohio law in relation to such issues as employer liability, qualification for workers' compensation benefits, and taxation. However, in the case at bar, the issue is the construction of the language used in a zoning ordinance. The legal discussions and tests regarding "employees" and "independent contractors" set forth in other areas of the law are not controlling to the interpretation of the common meaning of the term "employed" as used in the Village of New Richmond's zoning ordinance.

The court acknowledges that "[s]ince zoning regulations deprive owners of real property of certain uses thereof, and are in derogation of the common law, they must be strictly construed and not extended by implication."⁵⁹ However, "strictly construing" this ordinance does not mean the court should apply definitions of "employees" and "independent contractors" used in other areas of the law. Instead, the court strictly construes the language of the ordinance by using the common definition of the undefined term and limiting it to that definition.

The evidence before the Board of Zoning Appeals demonstrated that the appellants currently have some volunteers and some people who are paid for their services who care for the animals on the property. Mr. Kinne, when asked about how many people are "on the [ARAS] team[,]," said that the number varies.⁶⁰ There was evidence from the appellants' neighbors that they hear and/or see multiple vehicles

⁵⁸ Appellant's Brief at pg. 9, citing, *Golden v. Kearse*, 12th Dist. No. CA98-08-164, 1999 WL 374128 (June 7, 1999); *State ex rel. Nese v. State Teachers Ret. Sys. Bd.*, 10th Dist. No 09AP-1161, 2011-Ohio-6764; and *Behner v. Industrial Comm.*, 154 Ohio St. 433 (1951).

⁵⁹ *Sammons*, supra, paragraph two of the syllabus.

⁶⁰ Transcript of the Proceeding from August 7, 2013 at 41.

going to the property on an almost-daily basis. What is clear in the record is that the appellants employ multiple people that they classify as independent contractors based on the fact that they are being paid hourly for the services they perform in caring for the animals.⁶¹

The court finds that the determination by the Village of New Richmond Board of Zoning Appeals that the appellants currently employ more than one person at the operation on their property is not arbitrary and is supported by competent and reliable evidence. Those persons whom the appellants classify as “independent contractors” meet the general definition of being “employed” by the appellants in that they provide services on the property in return for hourly wages. At least four or five people have been employed by the appellants in the past year to perform services at the subject property.⁶²

The definition of “home occupation” in the zoning ordinance prohibits several specific activities and situations and, if any of these things exist on the property at issue, the property cannot qualify for a home occupation permit. In the case at bar, the court has affirmed the Board’s decision that the animal sanctuary on the appellants’ property employs more than one non-family member. As a result, the appellants cannot meet the definition of a home occupation as set forth in Section 237 of the Village of New Richmond Zoning Ordinance.

Certainly caring for animals that have no other home, including sick and elderly animals in danger of being euthanized at kill shelters, is a laudable activity. However, this is a zoning case which is before the court on appeal, and the court must find that

⁶¹ Id. at pg. 21 (Q: Do you have some people you contract with that assist in caring for the animals? A [Mr. Kinne]: Yes, we do. * * * Q: So, when do they come to New Richmond? A: Just on an as-needed basis.).

⁶² Id. at pg. 28.

the Board's decision that the animal sanctuary operation on the Country Place property currently employs more than one non-family member was not an arbitrary decision and that the decision was supported by competent and reliable evidence. As a result, the court cannot find that the Board's denial of the appellants' application for a home occupation permit was unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence.

While this issue is dispositive of this appeal, the court will address the remaining issue as well, which is the Board's finding that a home occupation permit cannot be issued in this case because the storage building out of which the animal sanctuary operates is not on the same premises as the appellants' residence.⁶³

The appellants point to the property description at the time the property was purchased. However, it is undisputed that there are two separate parcels with two separate parcel IDs recognized by the Clermont County Auditor's office for the two lots at issue.⁶⁴ The home occupation definition set forth in Section 237 of the zoning ordinance uses the word "premises," which is not defined by the ordinance. The ordinance does define the word "lot" as including the words "plot" or "parcel."⁶⁵

The Board of Zoning Appeals noted in its findings of fact that "the actual housing of animals is at 2479 Country Place, which is a separate lot."⁶⁶ There are two separate parcel numbers for the two parcels (Parcel Nos. 260916.854 and 260916.853), as evidenced by the legal description of the property included with the appellants'

⁶³ Id. at pg. 77.

⁶⁴ Id. at pgs. 34-35.

⁶⁵ Exhibit Index of Transcript, Exhibit A, Section 201(5).

⁶⁶ Transcript of Proceedings from August 7, 2013 at pg. 77.

refinancing documentation from 2013.⁶⁷ As a result, the Board's finding that the residence and the animal sanctuary are on separate lots was supported by competent, credible evidence and was not unconstitutional, illegal, arbitrary, capricious or unreasonable.

Since the appellants' residence is on a separate parcel from the animal sanctuary, they cannot qualify for a home occupation permit. As set forth above, the zoning ordinance begins its description of home occupation as "[a]ny occupation or profession carried on by a member of the immediate family, *residing on the premises* * * *." For the purposes of the zoning ordinance, the word premises would refer to the lot, which includes the term parcel. The appellants are not residing on the premises where the animal sanctuary is located. Therefore, the Board's finding that the appellants' could not meet the definition of a home occupation was also supported by competent, credible evidence and was not unconstitutional, illegal, arbitrary, capricious or unreasonable.

Based on the above analysis, the decision of the Board of Zoning Appeals rendered on August 7, 2013 shall be affirmed.

CONCLUSION

The court hereby finds in case number 2013 CVF 00962 that the decision of the Village of New Richmond Board of Zoning Appeals rendered on May 21, 2013 is hereby affirmed.

⁶⁷ Exhibit Index of Transcript, Exhibit D-13.

The court hereby finds in case number 2013 CVF 001307 that the decision of the Village of New Richmond Board of Zoning Appeals rendered on August 7, 2013 is hereby affirmed.

IT IS SO ORDERED.

DATED: _____
Judge Jerry R. McBride

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the within Decision/Entry were sent via Facsimile this 21st day of April 2014 to all counsel of record and unrepresented parties.

Administrative Assistant to Judge McBride