BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

Appeal of Zoning Administrator's Decision Allowing the Location of a 24-Hour Dog Boarding Kennel Use at premises 1412 Q Street, NW, (Square 0209, Lot 0878) per Certificate of Occupancy No. 57903, dated July 23, 2003, issued to WagTime, LLC.) BZA No. 17092

PRE-HEARING SUBMISSION OF APPELLANTS: STEPHANIE MENCIMER, ERIK WEMPLE, JOHN WEAVER and FORREST R. SMITH

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D.C. BOARD OF ZONING

This pre-hearing brief is submitted to address the legal issues raised by this appeal, as follows:

(I) whether the Zoning Administrator erred in granting a Certificate of Occupancy to a 24-hour dog boarding kennel, a use that is not defined by the zoning regulations, as a matter-of-right use permitted in a C-3-A zoning district by failing to apply correctly the Zoning Regulations (11 DCMR section 741), by incorrectly determining that a kennel is "similar to" matter-of-right uses within the C-3-A zone (11 DCMR section 199.2(g));

(II) whether the Zoning Administrator erred by granting a Certificate of Occupancy to a 24-hour dog boarding kennel as an "accessory use" (11 DCMR section 199.1) to a matter-of-right use permitted in a C-3-A zone (11 DCMR section 741.4 and 742.3);

(III) whether the Zoning Administrator erred by granting a Certificate of Occupancy to a 24-hour dog boarding kennel as an unrestricted matter-of-right use in a C-3-A zone rather than ruling that the kennel use would require a use variance (11 DCMR section 3103.2) to locate in a C-3-A district;

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(IV) whether the Zoning Administrator erred in granting a Certificate of Occupancy to a 24-hour dog boarding kennel to locate immediately adjacent to a residential neighborhood by failing to apply section 101.4 of the Zoning Regulations (the provisions of other regulations shall govern whenever they impose higher standards than the Zoning Regulations) and by failing to follow the stated policy of the Zoning Commission that interpretations of the Zoning Regulations should take the greatest possible account of other DC municipal laws and regulations; and,

(V) whether the Zoning Administrator erred in granting a Certificate of Occupancy to a 24-hour dog boarding kennel at 1412 Q Street, NW, by failing to consider the DC Comprehensive Plan (10 DCMR sections 102.2, 112.6(d), 1102.1(e), 1104.1, 1108.1 and 1138.1) and, in particular, the Ward 2 Plan of the DC Comprehensive Plan (10 DCMR sections 1325.2 and 1327.1), in determining that a 24-hour dog boarding kennel constitutes a matter-of-right use at that site.

This brief expands on and replaces the allegations of error statement filed by the Appellants in respect of this appeal with the Office of Zoning on September 22, 2003.[1]

[1] The grievance statement filed by the Appellants is appended to this brief (Attachment 1) for completeness of the documentary record relating to this Appeal. In addition, a preliminary list of witnesses is appended to this brief (Attachment 2) and a full list of all Attachments to this submission is provided following the signatory page.

Background

At community meetings in May and June, 2003, WagTime, LLC (hereinafter referred to as "WagTime") announced its' intention to apply for a Certificate of Occupancy to operate a dog grooming business, a dog boarding kennel business, and a retail store selling pet accessories at 1412 Q Street, NW, a lot that contains a 1.5 story structure (first floor and a mezzanine level) of approximately 1,248 square feet, that was previously used as a real estate office, and is located in the ARTS/C-3-A zoning district on the border with the adjacent R-5-B zoning district.[2] In response to objections raised by persons residing adjacent to the property regarding the appropriateness of such a use in the C-3-A zone, the Zoning Administrator stated as follows:

> *"...In a C-2 zone (DCMR-11, 721.2) the following service establishments are matter of right uses:*
>
> *1) Public bath, physical culture, or health service*
> *2) Veterinary hospital*
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> *In same zone (DCMR-11, 721.3) a Pet shop is matter of right use as a retail establishment. DCMR-11, 721.4 states that "other service or retail use similar to that permitted in 721.2 and 721.3, ... in a C-2 district as a matter of right".*
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> *It is my opinion and that of the Acting Zoning Administrator that a pet spa is allowed under the preceding guidelines in a C-2-A zone and all subsequent zones."* [3]

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[2] See attached zoning map of the area surrounding 1412 Q Street, NW, (Attachment 3) and the attached Lot Map of the properties neighboring 1412 Q Street, NW, (Attachment 4). The meetings in question were a community meeting between WagTime, Q Street residents and ANC 2F01 Commissioner Silverman on May 14, 2003, and an ANC 2F meeting on June 4, 2003. The source for the details quoted here about the building located at 1412 Q Street, NW, is the Certificate of Occupancy (No. 57903) issued to WagTime (Attachment 5). WagTime's Application for its Certificate of Occupancy at 1412 Q Street, NW, could not be located by the Zoning Administrator's office in time to be filed by the appellants with this brief and, when it is located, the Application may be submitted to the Zoning Office for the document file for this Appeal separately to this submission.

[3] Source: E-mail communication from the Zoning Administrator's Office to the appellants on June 4, 2003 (Attachment 6).

On the basis of the Zoning Administrator's determination, the Department of Consumer and Regulatory Affairs issued a Certificate of Occupancy on July 23, 2003, to WagTime for the following approved uses: "24-hour dog boarding and grooming with accessory retail sale of pet supplies (Certificate of Occupancy to expire 1-31-04)."[4]

Discussion

While the Zoning Administrator's June 4 e-mail explanation refers loosely to a "pet spa," the Certificate of Occupancy more specifically identifies the use of the property as being for "24-hour dog boarding and grooming". The word "boarding" is defined by the Zoning Regulations by way of the definition of the term "boarding house" (Id. 199.1) as the act of "(providing), for compensation, meals or lodging and meals to three or more guests on a monthly or longer basis." The word "grooming" is defined indirectly by the Zoning Regulations by way of reference to the meaning given in *Webster's Unabridged Dictionary* (Id. 199.2(g)).[5] *Webster's* defines the verb "to groom" as "to clean and condition (as a horse or dog)".[6] Thus, "24-hour dog boarding and grooming" is the provision of 24-hour lodging, cleaning and conditioning services to dogs.

The Appellants in this case do not challenge the Zoning Administrator's determinations that the dog grooming ("cleaning and conditioning") use and the accessory retail (sale of pet accessories) use identified on the Certificate of Occupancy are each permitted uses in the C-3-A

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[4] Source: Certificate of Occupancy No. 57903. Please note that the Certificate of Occupancy incorrectly identifies the property as being located in the CM3 zoning district rather than the ARTS/C-3-A zone. It is not formally known to the appellants why the Certificate of Occupancy was issued on a temporary basis, but the informal explanation from staff in the Zoning Administrator's Office (rather than the Zoning Administrator himself) is that the temporary nature of the Certificate of Occupancy was intended to provide for any impact of the use on neighboring property owners to be assessed and reviewed as necessary.

[5] See Concerned Citizens of Brentwood v. Board of Zoning Adjustment, 634 A.2d 1234, 1243 (BZA appropriately relied on Webster's dictionary to define terms otherwise undefined by its regulations).

[6] Webster's Unabridged Dictionary, Online Edition (G & C Merriam & Company, 2003).

zone. The Appellants contend however that the Zoning Administrator's determination that the "24-hour dog boarding" (lodging) use is a permitted use in the C-3-A zone is incorrect as a matter of law.

I. The Zoning Administrator Erred by Failing to Apply Correctly the Zoning Regulations (11 DCMR section 741), Including by Incorrectly Determining that a 24-hour Dog Boarding Kennel is "Similar to" Other Uses Permitted as a Matter-of-Right in a C-3-A Zone.

First, the Certificate of Occupancy states that "24-hour dog boarding" (the kennel use) is a permitted use at these premises. However, nowhere in the relevant sections of the Zoning Regulations (11 DCMR sections 741, 721, 701, 350, 330, 320, 300 and 201) listing those uses that are permitted in the C-3-A zone is "24-hour dog boarding" (or any other form of dog boarding) listed as a permitted use. Therefore, as the Zoning Administrator implicitly concedes in his e-mail explanation, the dog boarding use is plainly not *per se* a use that is permitted in these districts under the regulations. Second, while the Zoning Regulations define "boarding" to be "a building or part of a building that provides, for compensation, meals or lodging and meals to three (3) or more guests," (11 DCMR 199.1), and that is permitted (subject to restrictions) in a C-3-A zone (11 DCMR sections 741.1, 721.1 and 701.6),[7] it is: (a) neither clearly evident that a boarding house analogy is the underlying basis for the Zoning Administrator's interpretation of 24-hour dog boarding (e.g. there is no reference to a boarding house in the Administrator's June 4 e-mail explanation, and (b) there is no evidence that the Zoning Administrator determined that the dog boarding would consist solely of lodging services "***on a monthly or longer basis*** to

[7] The restrictions include the following: no sign shall be displayed on the premises; and, no advertisement shall be displayed or published on or off the premises holding out the establishment to be a hotel, motel ... or other transient accommodation (11 DCMR section 701.6).

dogs," when the Administrator approved "24-hour dog boarding" in this case; and (b) nor does the provision of long-term (monthly or longer) lodging services (subject to the restrictions contained in section 701.6) match the dog boarding services actually being provided at the premises by WagTime.[8]

Accordingly, the question here is whether 24-hour dog boarding is similar to any use that is expressly identified as a permitted use within the C-3-A or less restrictive zone. As we now discuss, 24-hour dog boarding (hereinafter referred to as the boarding kennel use) is not "similar to" any of the uses identified in the Zoning Administrator's June 2003 ruling: (A) a public bath, physical culture, or health service; (B) a veterinary hospital; or (C) a pet shop, each of which is defined indirectly by the Zoning Regulations by way of reference to the meaning given in *Webster's Unabridged Dictionary* (Id. 199.2(g)):[6]

A. A public bath, physical culture or health service is not a boarding kennel

Webster's Unabridged Dictionary defines the word "bath" as a building containing an apartment or series of rooms designed for bathing; the word "public" as "a place accessible or visible to the public or the community; the word "physical" as of or relating to the body; the word "culture" as expert care and training (as in beauty culture); the word "health" as the general condition of the body; and the word "service" as a facility supplying maintenance or repair.

While a public bath, physical culture or health service each has some characteristics in common with dog *grooming*, none of these uses involves dog *boarding*.

[8] For example, WagTime (a) displays a sign at its premises (Attachment 7); (b) displays on the premises a second sign that advertises daily and overnight boarding services (Attachment 8); (c) advertises its "daycare" services in local newspapers (Attachment 9); and, (d) promotes its daycare services to prospective clients (Attachment 10).

In the case of public baths, physical culture services (such as fitness centers and gyms) and health services, each of these uses typically involve human clients entering the premises and using (indoor) facilities for periods of two to three hours at a time.[9] There is no sense in which the short-duration bathing and health services provided by these uses are the same as providing 24-hour lodging services (including on a monthly or longer basis) for dogs.

B. A veterinary hospital is not a boarding kennel

The term "veterinary hospital" is defined indirectly by the Zoning Regulations by way of reference to the meaning given in *Webster's Unabridged Dictionary* (Id. 199.2(g)).[6] *Webster's* defines the word "veterinary" as of, relating to, or being the science and art of prevention, cure or alleviation of disease and injury in animals and especially domestic animals; and defines the word "hospital" as an institution where the sick or injured are given medical or surgical care. Dog boarding does not involve the treatment of disease or the provision of medical care to dogs and a dog boarding kennel is thus not a veterinary hospital.

Moreover, existing case law establishes the distinction between veterinary hospitals and boarding kennels. See, for example, Jackson v. Lower Gwynedd Township Zoning Board of Adjustment (45 Pa. D. & C. 2.d 413 (PA, 1968) and, Passarelli and Sepe, et al. v. Greenwich Zoning Board of Review, (RI, June 20, 1994). There is a very real difference in the intensity and impacts associated with the treatment of animals as

[9] Note that the Zoning Regulations relating to C-3-A zones contain provisions that deal with beauty parlors, clinics, hospitals, and public swimming pools separately to "public baths, physical culture and health services" and thus the former can be construed to be excluded from the latter.

distinct from the boarding or kenneling of animals. Indeed, a number of cases have found that dog boarding constituted a nuisance, describing the impacts associated with boarding by stating: "the barking, yelping, scratching and growling of some sixty or sty-five dogs at different hours, day and night, while kenneled on the three-acre tract of the defendants' [veterinary hospital] . . . prevented sleep and otherwise disturbed the rest of the numerous owners and their families." Knowles v. Central Allapattae Properties, Inc. (198 So. 819, 822 (Fla. 1940)). See also Krebs. V. Herman, 6 Pac. 2d 907 (Colo.) (which found that the barking and howling of dogs continuously annoyed and kept awake the plaintiff, and that the odors were very offensive). Accordingly, a dog kennel is not "similar to" a veterinary hospital, either in terms of the nature or the intensity of the use.

C. A pet shop is not a boarding kennel

The term "pet shop" is defined indirectly by the Zoning Regulations by way of reference to the meaning given in *Webster's Unabridged Dictionary* (Id. 199.2(g)).[6] *Webster's* defines the word "pet" as a domesticated animal kept for pleasure rather than utility, and the word "shop" as a small retail establishment or a building or room stocked with merchandise for sale. As noted above, the term "boarding" is defined directly by the Zoning Regulations (Id. 199.1) as the provision of lodging services. Thus, the Zoning Regulations define pet shops as retail establishments that sell pets and define boarding as the provision of lodging services. Lodging services and retail sales are appropriately recognized by the Zoning Regulations as being two completely separate categories of

use. The Zoning Regulations specify that lodging services and retail sales are not the same and therefore that a pet shop is not the same as a boarding kennel.[10]

Fourth, the Zoning Administrator's decision refers to "other service or retail uses ***similar to*** those permitted" (emphasis added). The Zoning Regulations define "similar to" indirectly by way of reference to the meaning given in *Webster's Unabridged Dictionary* (Id. 199.2(g)).[6] *Webster's* defines "similar to" as being strictly comparable and as being alike in substance or essentials. By this standard also, the Appellants contend that the Zoning Administrator's public bath, veterinary hospital and pet shop analogies with respect to a 24-hour dog boarding kennel again fall wide of the mark.

* There is no sense in which short-duration (indoor) bathing and health services provided to human clients can be considered to be strictly comparable or alike in substance or essentials to 24-hour (indoor and outdoor) boarding or lodging services (including on a monthly or longer basis) provided to dogs.

* Courts in other jurisdictions have made long-standing rulings that veterinary services and veterinary hospitals are each distinct services both from each other and from "animal boarding schools."[11] For example, in Jackson v. Lower Gwynedd Township Zoning Board of Adjustment, 45 Pa. D & C2d 413, 1968 Pa. D & C LEXIS 144 (1968), the court, in interpreting the Montgomery County, PA's zoning ordinance, which did not identify a "kennel" as a permissible accessory use in a residential zone, held that the boarding or breeding of animals is not "similar to" a veterinarian," explaining: "Clearly, a veterinarian is no more required to

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[10] Note that, consistent with the Appellants' interpretation of the Zoning Regulations' distinct definitions of pet shops and boarding operations, WagTime does not sell pets.

[11] A wealth of case law exists that establishes the propriety of the DC BZA referring to the rulings of other jurisdictions. See, for example, Citizens' Coalition v. DC BZA, 619 A.2d 940, 952 (DC 1993), and Speyer v. Barry 588 A.2d 1147, 1154 (DC 1991).

operate a dog and cat hospital or an animal boarding school in the pursuit of his profession than is a medical doctor required to operate a hospital, sanatorium or nursing home." Indeed, in one case in which a court upheld a zoning order approving an application to build a veterinary hospital, the court expressly distinguished between animal hospital and kennel uses, and based its ruling on an express condition in the zoning order that:

> [t]he proposed animal hospital facility would only accommodate boarding animals associated with and during hospitalization. *There will be no general boarding of animals, no kennel and no runs on the premises.*. Consequently, any possible noise from barking dogs will be at a minimum.
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> Passarelli v. Pratt 1994 R.I. Super. LEXIS 51.

* Pet shops do not meet the test of being strictly comparable or alike in substance or essentials to 24-hour dog boarding or lodging services. And this contention is supported by (i) even the most rudimentary analysis of the zoning characteristics of the two respective uses; (ii) case law from other jurisdictions; (iii) regulatory law from other jurisdictions; and, (iv) Federal law:

(i) <u>rudimentary analysis of the essential zoning characteristics of pet shops and boarding kennels</u> – of the kind that appears not to have been undertaken by the Zoning Administrator prior to providing his June e-mail explanation in this case – serves to further define the zoning distinctions between these two respective uses:

* the ***core mission*** of a pet shop is to sell pet animals, and pet shops thrive by stocking small quantities of small-sized low-maintenance animals and by minimizing the duration for which any animal remains on the premises.[12] The core mission of a boarding kennel is to provide lodging for dogs, and kennel businesses thrive by attracting as many dogs as possible for the maximum

[12] We will offer further evidence and testimony in support of this contention at the Hearing for this Appeal.

possible duration. ***These starkly contrasting missions necessarily have very different implications for the zoning characteristics of pet shops and kennels:*** in terms of the number of animals; type of animals; size of animals; the facilities used to house the animals; the practices which are followed in respect of the animals; in many cases the control and behavioral environment in which the animals are kept; and, thus, for the external impact of kennel and pet shops respectively on the surrounding neighborhood;

* a key target demographic of pet shops is children, who are attracted to baby animals as these are of a size to which children can relate. Accordingly, pet shops commonly sell small, young (physically immature) domestic pets such as fish, birds, rabbits, kittens, hamsters, ferrets, gerbils, and the like—animals that appeal to their demographic and animals that have little or no impact on the property owners and community immediately surrounding the pet shop.[13] In contrast, boarding kennels are generally targeted specifically at adolescent and adult dogs who are insufficiently stimulated in their "home alone" environment, rather than puppies who are less likely to thrive in an extended-duration "rough and tumble" boarding environment involving older and larger dogs. ***As compared with the small numbers of small animals in pet shops, the large numbers of adult dogs housed by kennels result in kennels generating much greater volumes of noise and fecal material (with attendant potential fecal run-off, odor***

[13] Indeed, statistics from the Pet Industry Joint Advisory Council (PIJAC) indicate that only about 3,700 of the nearly 12,000 U.S. pet stores even sell cats or dogs at all. Even those pet shops that do sell dogs: (a) tend not to market mature dogs that appeal less to their target demographic and involve disproportionate on-site maintenance and noise burdens, and (b) have little incentive to stock large numbers of dogs in one place. Compared with other

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and rodent problems), and thus inevitably involve a much higher level of external impact on the surrounding neighborhood than a pet shop.[14] These respective characteristics are highly apposite to any consideration of whether a kennel is "similar to" --strictly comparable or alike in substance or essentials— (or in fact dissimilar to) a pet shop.

* ***in pet shops, the animals for sale are kept in a caged environment, whereas in many boarding kennels the dogs roam freely in a cageless environment.*** Many pets in a pet shop such as fish and birds never move from their immediate environments between arrival and sale and make little or no noise, unlike dogs in a boarding kennel which may be constantly in motion and in voice both on and off the premises during their stay. Again, part of the rationale for so-called "dog day-care" is to provide stimulus for the dogs and this has implications for the type of behavior encouraged of the animals by their environment and the kennel staff. While a pet shop's incentive is to maintain an atmosphere of tranquility for its small caged animals, cageless boarding kennels

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pet species, dogs require constant care, including regular exercise, social training, and regular veterinary checkups. Accordingly, few pet shops keep more than two or three dogs on their premises at any given time.

[14] An average dog produces approximately 1 liter of urine and one half pound of feces per day (Source: www.stormwatercenter.net Pollution Prevention Fact Sheet on Animal Waste Collection). In the case of WagTime which routinely boards around 20 dogs per day, the boarding use can thus result in as much as 20 liters of urine and 10 pounds of fecal matter per day or 140 liters of urine and 70 pounds of fecal matter per week. The implications of these levels of waste production are not simply hypothetical: the odor and the run-off of waste from the rear of the property have been documented by the community (Attachment 11). The noise produced by WagTime's kennel operation is similarly real: it has been documented at the 1412 Q Street premises by the community (Attachment 12). The noise was also documented (prior to WagTime's application for a Certificate of Occupancy at 1412 Q Street and prior to the Zoning Administrator's determination that a kennel was a matter-of-right use in a C-3-A zone) by WagTime itself at its previous premises in Adams Morgan as reaching a level of 101 decibels (Attachment 13) which is a significantly higher noise level than, for example, heavy truck traffic or an average factory. (The Appellants will provide more evidence regarding comparable noise levels at the Hearing for this Appeal). These noise levels resulted in eviction proceedings being commenced against WagTime at its previous premises and ultimately in WagTime signing a consent order to vacate the premises (Attachment 14).

on the other hand tend to foster an environment of stimulus and activity on the part of large adult dogs.[15] ***Thus the different control and behavioral environment of boarding kennels to pet shops increases the capacity for kennel dogs to disrupt the surrounding neighborhood both on and off the premises relative to pet shop animals.***

* none of the small-sized and low-maintenance animals in a pet shop generally requires periods outside of their caged environment or periods outdoors for exercise or physical hygiene purposes (cages are generally cleaned by transferring an animal from one cage to another). Accordingly pet shops as a rule do not need or use outdoor animal runs to accommodate their animals. In contrast, the large numbers of high-maintenance adult dogs housed in boarding kennels need exercise (indeed, the notion that dogs will be exercised while being boarded is a significant part of the motivation for dog-owners to board their dogs) and thus boarding kennels commonly rely upon outdoor "dog run" spaces that may be used by any number of dogs at a time to accommodate exercise of the dogs being boarded. Having an outdoor "dog run" space form part of the kennel facility saves costly labor for the kennel-owner, who would otherwise need to hire staff to walk the dogs individually or in groups off-premises in public space.[16] ***Large numbers of high-maintenance adult dogs using the outdoor "dog run" feature of kennels inevitably results in significantly greater noise levels being transmitted to***

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[15] WagTime specifically promotes itself as providing "cageless daycare and boarding" (Attachment 9).

[16] WagTime explicitly promotes itself as "the only indoor/outdoor daycare facility in town ..." (Attachment 9) and makes extensive use of the rear yard of the premises at 1412 Q Street on a daily basis as a dog run for up to 20 dogs. The yard is approximately 950 square feet and is ringed by residential courtyards and condominiums.

neighboring properties than is the case with an indoor pet shop.

* the small size, diverse species, and caged environment of animals in a pet store means that, by and large, the animals respond individually to their surroundings; whereas the nature of a boarding kennel operation is such that the dogs are either always, or for extended periods, in a "pack" or "gang" environment, whether on or off the premises, in which they are responding socially to external stimuli as a group or pack rather than as individuals. ***In the case of cageless boarding kennels, "pack behavior" can result in cacophonous noise and, in some circumstances, danger to surrounding residents,[17] whereas, in the case of diverse small animals caged in pet shops, the individual response of single infant animals to their surroundings carries much less capacity for external impact on surrounding property owners.[18]***

Consistent with the above analysis of the different essential zoning characteristics of kennels versus pet shops, the Zoning Administrator's issuance of a Certificate of Occupancy to a boarding kennel use at 1412 Q Street NW in the C-3-A district has resulted in noise levels measured at the boundary line with the directly contiguous residential property (1414 Q Street, NW, which is part of the R-5-B zoning district) that exceed –by significant margins-- not only the

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[17] This is not simply a theoretical possibility. On at least three occasions known to the Appellants, dogs have escaped from WagTime; on one of those occasions the dog was unfortunately run over in traffic, while in the other two cases the dogs were happily retrieved before any damage was done. On another occasion, a dog tethered with insufficient care in the open street frontage area of WagTime's premises lunged at a pedestrian passing by on the sidewalk and was able to come within inches of physically attacking the passer-by. Testimony in support of these instances can be offered at the Hearing for this Appeal.

maximum noise level permissible in the neighboring C-3-A zone (65 decibels during the daytime) but also the maximum permissible noise level in *industrial* zoning districts (70 decibels during the daytime) within the District of Columbia.[19] As a direct result of the Zoning Administrator's decision, the prevailing zoning characteristics of both the kennel site and the surrounding properties have been tangibly and quantifiably altered: from ambient noise levels of approximately 50 decibels in the absence of noise from the kennel use to ambient noise levels of 80-90 decibels in the presence of noise from the kennel use.

In addition to the change in the noise level, other material changes have also taken place: where odor never previously existed, strong odors of urine, fecal matter and chemicals have now been documented by residents and, indeed, have been reported by the boarding kennel itself to the DC Hazardous Materials Unit.[20] Run-off of waster water containing residual fecal material from the rear of the property into a public alley is now documented by residents to be a commonplace, virtually daily, occurrence, whereas this previously was not a characteristic condition at the site when it was a real estate office.

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[18] Indeed this factor is reflected in the distinct underwriting and risk assessment standards used for pet shops and boarding kennels throughout the insurance industry. Evidence and testimony on this issue will be presented at the Hearing for this Appeal.

[19] See 20 DCMR, Chapter 27 Noise Control, section 2701.1) and Attachment 15. In fact, the maximum noise level that is applicable at the boarding kennel site is that specified for the contiguous and more restrictive residential noise zone: 60 decibels during the daytime (20 DCMR, sections 2701.4 and 2701.1).

[20] See Attachment 11 and the report of the Hazardous Materials Unit of the DC Fire and Emergency Services Department (Incident Report No. 2003-0091682-000, dated 22 August 2003) contained therein.

As a result of the noise, odor and run-off generated by the boarding kennel use, the prevailing characteristic conditions at the boarding kennel site and at the properties in the area immediately surrounding the kennel site are now similar to the characteristic conditions that may prevail in the area surrounding a site in the industrial district that was being used for, say, a hauling operation, a waste handling facility or a manufacturing, processing or repair factory.[21] Indeed, as noted above, in the case of the noise level, the conditions prevailing at the boarding kennel site are significantly worse than those that would be legally permissible in the industrial district. These tangible and quantifiable alterations in the characteristic conditions at the kennel site and at the properties immediately surrounding the kennel site, are the direct result of the Zoning Administrator's decision in this case.[22]

(ii) Case law from other jurisdictions. In 1984, the City of Milwaukee, WI, whose ordinance permitted "pet shops" but not "kennels" in the applicable district, revoked the occupancy permit for a cat shelter in a mixed-use zoning district; the basis for the revocation was that the cat facility was a kennel rather than a pet shop. The administrative decision was appealed to the Wisconsin Court of Appeals who affirmed (August 1987) the revocation of the occupancy permit, a ruling based in part on the following rationale:

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[21] Evidence and testimony regarding the other types of facilities and activities that generate comparable noise will be presented by the Appellants at the Hearing for this Appeal.

[22] The alteration in the characteristic conditions in the area extends beyond 1412 and 1414 Q Street to a much wider number of properties including 1415-1420 Q Street to the west, 1408-10 Q Street to the east, and 1401 Church Street to the south of the boarding kennel site at 1412 Q Street, NW.

> *"...Although the selling of dogs and cats may occur in both a pet shop and a kennel, a kennel as specified in the ordinance's definition section is not to be considered within the definition of a pet shop. Additionally, all dogs and cats may be included within the broad category of mammal for sale, but only the presence for specified purposes of a minimum number of dogs or cats over the ages of five months constitutes a kennel. ..."*

Bruflat v. BZA of the City of Milwaukee, 141 WI. 2d 974; 414 N.W.2d 318 (WI 1987).

The Court of Appeals further explained:

> *"...a reasonably perceptible distinction exists which eliminates the need for persons of ordinary intelligence to guess as to the difference between a pet shop and a kennel..."*

(Id.)

Thus, legal rulings in other jurisdictions have recognized that pet shops do not meet a test of being strictly comparable or alike in substance or essentials to dog boarding kennels. There are apposite differences between the two uses, including the number of mature animals that are present on the premises in the case of the respective uses.

(iii) Regulatory law from other jurisdictions. Many other state and local jurisdictions have recognized the common sense force of such rulings and have chosen to enshrine the distinction between kennels and pet shops in regulatory law. The City of Denver, CO, defines a "pet shop" as a wholesale or retail business which is involved in the selling or trading of pet animals, and a "kennel" as any business that is involved in the boarding of pet animals.[23] These laws in other jurisdictions inherently recognize that a pet

[23] Evidence (including the citation for this reference) regarding the similar regulations in many other jurisdictions will be offered at the Hearing for this Appeal.

shop is not strictly comparable or alike in substance or essentials to a kennel operation.

(iv) Federal Law, too, distinguishes between pet shops and kennels. The Federal Government has promulgated regulations pursuant to the Animal Welfare Act (that governs all forms of trade and commerce in animals) which define a "retail pet store" as "...any outlet where only the following animals are sold or offered for sale, at retail, for use as pets: dogs, cats, rabbits, guinea pigs, hamsters ..., etc.[24] Indeed, the federal regulations specifically state that any operation "exhibiting pet animals...in an outside area" is *excluded* from the definition of a pet shop.[25] Thus, federal law recognizes the essential distinction between pet shops and kennels, and --by highlighting various activities, including any outdoor dimension, as being of particular importance in separating a pet shop use from other uses including a boarding kennel use—goes further in terms of establishing the "usual description of activities that is generally consistent with" either a pet shop or a boarding kennel.[26]

In summary, the Appellants contend that 24-hour dog boarding is neither a use that is permitted *per se* in a C-3-A zone, nor is it similar to any of the uses permitted by section 741 of the Zoning Regulations. The fact that animals stay overnight in pet shops (and in veterinary hospitals) is simply insufficient in and of itself to establish that pet shops (or veterinary hospitals) and boarding kennels "are alike in substance or essentials"; they are not. The essential characteristics of pet shops – they sell small-size low-impact infant pets of varied species and for

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[24] CFR Title 9, Chapter 1, Subchapter A - Animal Welfare.
[25] Id. CFR Title 9, Chapter 1.
[26] See Perkins v. DC BZA, 813 A.2d 206 (DC 2002): a Certificate of Occupancy should only be granted a matter-of-right where a proposed use is "generally consistent with the usual description of activities permitted" in the applicable zoning district, and no zoning category covers the proposed activity.

this purpose they house such animals indoors in a caged environment for short periods with very little attendant impact on neighboring property owners – explain why pet shops are a permitted use in the C-3-A zone. The essential characteristics of boarding kennels – they provide daily and weekly or longer lodging and exercise services to large numbers of high-impact, high-maintenance adult dogs both indoors and outdoors in cageless environments with very significant attendant impacts on neighboring property owners – explain in the view of the Appellants why boarding kennels are neither similar to pet shops nor a use that is permitted in a C-3-A zone by the Zoning Regulations. Case law, Federal law and regulatory law from other jurisdictions support the Appellants' interpretation. The Appellants contend that the Zoning Administrator erred in granting a Certificate of Occupancy to a boarding kennel at 1412 Q Street, NW, and that the Board of Zoning Adjustment should therefore overturn the Administrator's decision in this instance.

II. The Zoning Administrator erred by ruling a kennel to be an "accessory use" (11 DCMR section 199.1) to a matter-of-right use permitted in a C-3-A zone (11 DCMR section 741.4 and 742.3);

Dog grooming is one of the service uses authorized on the Certificate of Occupancy issued by the Zoning Administrator in this instance, and is a matter-of-right use in a C-3 zone.[27] The Zoning Regulations provide that "other accessory uses customarily incidental and subordinate to the uses permitted in C-3 Districts shall be permitted in a C-3 District" (Id. 742.3). An "accessory use" is defined by the Zoning Regulations to be a use that is customarily incidental and subordinate to the principal use, and located on the same lot with the principle use (Id. 199.1). Provision of dog grooming services does not, however, normally involve the

ancillary provision of boarding services and thus "24-hour dog boarding" cannot be argued to be a customarily incidental accessory use to a dog grooming operation.[28]

WagTime's own description of its operations to Advisory Neighborhood Commissioner Silverman (2F01) lists grooming and boarding as separate activities,[29] as does the price list displayed on its premises (Attachment 8), and WagTime quotes rates separately for grooming and boarding to prospective clients (Attachment 9). Clients can have their dogs groomed at WagTime without boarding their dogs there, and *vice versa*. Boarding is an entirely separate service. WagTime's treatment of grooming as a separate product to boarding is consistent with the practice of dog grooming establishments generally, which operate in much the same fashion as hair salons: clients come in by appointment and generally stay only the 1-2 hours that the grooming service requires. It is not customarily incidental to a 1-2 hour grooming service to provide day and/or overnight lodging services to the client.

Moreover, existing case law establishes a clear standard with respect to accessory uses. The most common theme running through the case law is the degree of impact an accessory use has on the surrounding community: *"...the degree of impact upon the surrounding residential neighborhood is the most reasonable test of the appropriateness of an accessory use..."*[30] As discussed in section (I) above, dog boarding kennels have characteristics that involve significantly greater negative external impacts on the surrounding neighborhood than do uses such as dog grooming or pet shops that are permitted in the C-3-A zone. In particular, like a pet shop, dog grooming is an entirely indoor service. Dog grooming involves provision of a specific

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[27] See BZA Decision in Application No. 12820 (DC, March 6, 1979) which states that a dog bathing and grooming facility is permitted as a matter-of-right in a C-2 zone.

[28] Evidence and testimony regarding this point will be presented by the Appellants at the Hearing for this Appeal.

[29] See Attachment 16 which was compiled by Commissioner Silverman in June 2003 from discussions with WagTime's owner.

individual service to an individual dog, unlike a boarding kennel which involves the provision of a general service to large numbers of dogs at the same time and thus exponentially increases the impact on neighboring property owners. Finally, dog grooming involves individual dogs being present on the premises for 1-2 hours of time after which they leave the premises in question rather than remaining there. The impact of a boarding kennel use on the surrounding neighborhood is of an entirely different order of magnitude that, in the Appellants' view, would prevent a boarding kennel from meeting the test for the appropriateness of an accessory use,[31] particularly in respect of the premises in question which, while part of a C-3-A zone, are directly contiguous with the neighboring property that lies in the R-5-B zone.[32]

III. The Zoning Administrator erred by granting an unrestricted matter-of-right use to a boarding kennel in a C-3-A zone rather than ruling that the kennel use would require a use variance (11 DCMR section 3103.2) to locate in a C-3-A district.

Both the general and express provisions of the Zoning Regulations communicate the clear intention of the Regulations to protect the public welfare by restricting uses with objectionable external impacts. To wit, the Zoning Regulations:

* state that "In their interpretation and application, the provisions of this title shall be held to be the *minimum requirements* adopted for the promotion of the public

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[30] See Citizens Coalition v. DC BZA, 619 A.2d 940, 952 (DC 1993); and N. Williams, American Land Planning Law, section 74.16 at 231 (1985).

[31] Any residual question-marks concerning the negative impact of boarding kennels on surrounding neighborhoods can be satisfied by the most cursory review of nuisance case law relating to boarding kennels: see, for example, Primeau v. the State of Washington. 70 Wn.2d 109; 422 P.2d 302 (WA 1966); Lowney, Renson et al v. Zoning Hearing Board of Lower Southampton Township, 46 PA. Commw. 213; 406 A.2d 1160 (PA Commw. 1979); and Knowles v. Central Allapattae Properties, Inc., 145 Fla. 123; 198 So. 819 (FL 1940).

[32] In addition to which, the properties immediately surrounding the premises with the exception of one are devoted to residential uses, irrespective of whether those properties are zoned commercial or residential.

health, safety, morals, convenience, order, prosperity and general welfare ..." (Id. 101.1; emphasis added);

* place restrictions on those uses with negative external impacts that are permitted as a matter-of-right in a C-3-A district: for example, bowling alleys must be soundproof (Id. 721.2 (e)); plumbing and heating shops are excluded from having outdoor storage areas (Id. 721.2 (q)); fast food restaurants and food delivery services are required to be setback from residential zones (Id. 741.3); boarding houses are excluded from offering transient accommodation (Id. 701.6 (i)); bakeries, storage facilities, and laundry and dry cleaning establishments are limited in scale (Id. 701.4 (d), 721.2 (j), 741.2 (b));

* go further still in providing that uses with objectionable external impacts such as auto repair garages, motorcycle sales and repair, gasoline stations, mechanical parking garages, massage establishments, large dry cleaning establishments, and public utility pumping stations are not permitted in a C-3-A zone other than as special exceptions and subject to conditions (Id. 743).

* expressly provide that certain uses in the ARTS Overlay district are subject to strict conditions concerning (a) outdoor storage of materials and outdoor processing, fabricating and repairs; and (b) the absence of objectionable effects on the character of the neighborhood because of the operations, traffic, or other conditions created by the use (Id. 1901.4).

* specifically state that special exceptions to the zoning requirements in the ARTS district will only be granted if "the uses ... will not adversely affect neighboring

property or be detrimental to the health, safety, convenience or general welfare of persons, living, working or visiting in the area" (Id. 1906.1 (a));

* expressly state that uses involving "heavy truck traffic and loading and unloading operations are expected to be characteristic of C-M districts" (Id. 800.2) whereas the dog boarding kennel use in this case has been documented to generate noise levels similar to those associated with heavy truck traffic;[33]

* expressly establish standards for the "external effects" that may be generated by uses in the C-M (Manufacturing) and M (Industrial) zones, thus further underlining the intent of the Zoning Commission that not only are such external effects to be strictly controlled, but uses that generate objectionable external impacts are to be located outside of mainstream commercial and residential zones and within these manufacturing and industrial districts (Id. 804 and 825).

* in residential zoning districts (such as the district which this site abuts), prohibit uses such as "stables" other than as special exceptions and subject to conditions including: setbacks from lot lines of 50 feet, and locations that do not adversely affect the light and air of adjacent land and buildings. (Id. 208), thereby underscoring the Zoning Commission's recognition of the negative external impacts created by uses involving the provision of housing for even a limited number of animals.[34]

By means of all the various sections of the Zoning Regulations identified above, the Appellants contend that the Regulations express the clear intent of the Zoning Commission (1) to

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[33] Evidence and testimony on this point will be offered by the Appellants at the Hearing for this Appeal.

[34] A "private stable" is defined by the Zoning Regulations as "an accessory building housing not more than four horses or other equine animals for private use and not for remuneration, hire or sale" (Id. 199.1)

group together within particular zoning districts uses that have comparable characteristics in terms of the level of their external impact; and (2) to place restrictions on the location and operation of uses that have negative external impacts. No list of uses can be exhaustive and so the Zoning Regulations expressly provide that uses "similar to" those uses listed in the Regulations shall be permitted. When examining an application for an unlisted use, it is incumbent upon the Zoning Administrator to analyze whether the unlisted use has substantive and essential characteristics that are strictly comparable to listed uses. The Appellants contend that in this case the Zoning Administrator simply failed to recognize the significantly greater (negative and substantive) impact characteristics of indoor/outdoor dog boarding kennels compared to pet shops (or even to *soundproof* bowling alleys) as well as other substantive differences between boarding kennels and uses permitted in a C-3-A zone. An analysis (see section I above of this brief) of the characteristics of a boarding kennel reveals significant differences to those of permitted uses in the C-3-A zone. Indeed, an examination (above in this section of this brief) of the uses upon which restrictions are placed by the Zoning Regulations (and the type of those restrictions) reveals *significant similarities* (noise levels akin to heavy truck traffic; negative impact of outdoor areas; setbacks from residential zones) *between uses restricted in a C-3-A zone and the impact characteristics of kennels.*

When an unlisted use has significantly different characteristics to those of a listed use, then the Zoning Administrator is required to deny matter-of-right issuance of a Certificate of Occupancy and to rule that the unlisted use would require the issuance of either a special exception or a use variance by the Board of Zoning Adjustment (Id. 3200.1, 3203.1 and 3100.1). The Appellants contend that the Zoning Administrator should in this case have denied matter-of-right issuance of a Certificate of Occupancy to a 24-hour dog boarding kennel and, further,

should have ruled that this aspect of the applicant's proposed operation would require a *use variance*.

The Zoning Regulations (Id. 3103.2 and 3104.1), together with existing case law,[35] clearly establish that the difference between a use variance and a special exception is that a special exception may be granted if the proposed use *"will be in harmony with the general purpose and intent of the Zoning Regulations"*, whereas a use variance may be granted to allow a use that ordinarily would be prohibited by the Zoning Regulations. Further, the Board of Zoning Adjustment is authorized to grant special exceptions only as provided in the Zoning Regulations and only where the special exceptions *"will not tend to affect adversely the use of neighboring property ..."* (Id. 3104.1). The Appellants contend that the both the general and express provisions of the Zoning Regulations (listed above in this section of this brief) communicate the clear intention of the Regulations to protect the public welfare by restricting uses with objectionable external impacts. In the appellants' view, authorization of a dog boarding kennel use as a special exception in a C-3-A zone: (1) would neither be in harmony with the general purpose and intent of the Zoning Regulations; (2) nor would it tend *not* to affect adversely the use of neighboring property; and (3) nor would it be in conformance with the conditions for special exceptions specified in sections 3104.1 and 743 of the Zoning Regulations. Therefore, the Appellants contend that the Zoning Administrator should have ruled that the boarding kennel use would require a use variance.

The Appellants contend that the Certificate of Occupancy for a boarding kennel use at 1412 Q Street, NW was improperly issued in contravention of the Zoning Regulations and that the Zoning Administrator's decision must therefore be overturned by the Board of Zoning

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[35] See Citizens Coalition v. DC BZA, 619 A.2d 940, 948 (DC 1993).

Adjustment in this instance. The Zoning Administrator's decision to issue a matter-of-right Certificate of Occupancy to a 24-hour dog boarding kennel in the ARTS/C-3-A zone betrays both the letter and spirit of the Zoning Regulations. To uphold the Zoning Administrator's decision to authorize a boarding kennel use in a C-3-A district –despite the plain language and intent of the Zoning Regulations regarding the restriction of uses with negative impacts—would establish a precedent that would substantially alter and widen the range of uses judged to be "similar to" those permitted in a C-3-A zone with potentially seriously deleterious effects for such C-3-A districts and for the promotion of the public health, safety, convenience, order, prosperity and general welfare of the residents and businesses located therein.

IV. The Zoning Administrator erred in granting a Certificate of Occupancy to a 24-hour dog boarding kennel to locate in the midst of a residential neighborhood by failing to apply section 101.4 of the Zoning Regulations (the provisions of other regulations shall govern whenever they impose higher standards than the Zoning Regulations) and by failing to follow the stated policy of the Zoning Commission that interpretations of the Zoning Regulations shall take the greatest possible account of other DC municipal laws and regulations.

The Zoning Regulations require that *"the provisions of any statute or other municipal regulations shall govern whenever they ... impose higher standards than are required by this title"* (Id. 101.4). Moreover, it is the stated policy of the Zoning Commission that interpretations of the Zoning Regulations shall take the greatest possible account of other relevant DC municipal laws and regulations in order to provide the consistency and predictability in rule and management of activities within the District that is key to effective government. There are many DC municipal laws and regulations that in fact set higher standards than the Zoning Regulations in relation to issues that bear directly on zoning consideration of a kennel use and a summary discussion of the apposite ordinances follows.

The noise control regulations (20 DCMR Chapter 27) are prefaced by the statement:

> *"It is the declared public policy of the District that every person is entitled to ambient noise levels that are not detrimental to life, health and enjoyment of his or her property. It is hereby declared that excessive or unnecessary noises within the District are a menace to the welfare and prosperity of the residents and businesses of the District. It is the declared public policy of the District to reduce the ambient noise level in the District to promote public health, safety, welfare and the peace and quiet of the inhabitants of the District, and to facilitate the enjoyment of the natural attraction of the District."* (Id. 2700.1)

In the densely populated location of this boarding kennel use --a site directly contiguous to the adjacent residential zoning district and a site immediately ringed by high-density residential (condominium) uses-- the inescapable consequence of the Zoning Administrator's decision to authorize issuance of a Certificate of Occupancy for a kennel use is that 30-40 District residents either currently have or will have (once sites under construction are completed and occupied) the extremely loud barking noise created by up to 20-25 dogs emanating from a kennel site with an outdoor dog run that lies within feet (or inches in some cases) of their property lines, windows, doors, exterior courtyards, balconies and terraces. This outcome is clearly detrimental to the health and enjoyment of their properties for these residents, and thus to the welfare and prosperity of the District in accordance with the District's own Noise Control regulations.

Common sense suggests, and the experience of other jurisdictions confirms, that large numbers of dogs confined to a small indoor/outdoor space will produce significant volumes of dog barking noise. Kennels are generally known to produce regularly noise levels in the order of 80-100 Decibels –well above the permissible noise level (55 decibels) for a residential neighborhood in the District. The location of a kennel on a site immediately contiguous to a residentially-zoned property is inconsistent with the purpose and intent of the DC noise regulations. Regardless of how well run or staffed, an indoor/outdoor dog kennel simply cannot

adequately control the barking of large numbers of dogs nor expect to meet the city regulations for noise. Zoning, rather than misguided noise enforcement efforts that would require dedicated enforcement resources of a level that is simply infeasible, is the appropriate regulatory mechanism for safeguarding the welfare and property rights of neighboring residents against the disruption and detrimental impacts that such a kennel imposes.

District legislators and regulators understand that keeping many animals is apt to produce excessive noise levels and other problems for surrounding property owners, and have promulgated regulations that attempt to limit the potential for such outcomes to arise. For example, 8 DCMR Chapter 18 (Animal Control) requires individual residents to obtain a permit to keep more than five mammals; the issuance of such permits is subject to stringent conditions. The boarding kennel use at issue in the Appeal confines up to 4-5 times this number of dogs at the small 1412 Q Street site. The District's Animal Control provisions further explicitly state that persons with more than 5 mammals *"...shall not permit objectionable odors or noises to disturb the comfort or quiet of any neighborhood"* (Id. 8.1809). That District legislators have seen fit to strictly limit the possibility for more than 5 animals to reside together --out of concern for the noise, odor and welfare consequences of such uses upon the neighborhoods in which they are located-- is a factor that should have been accorded great weight by the Zoning Administrator in his consideration of the permissibility of a use involving the location of 20 or more dogs in the midst of a virtually wholly residential area.

Legislators' concern over dogs and the noise that they generate is evident elsewhere in DC regulations: 8 DCMR, Chapter 9 states that *"no person shall own or keep a dog that by barking or in any other manner disturbs the quiet of any neighborhood or person"*. A decision by the Zoning Administrator to allow a kennel use that will necessarily disturb the quiet of a

neighborhood and of many residents therein through the barking of large numbers of dogs is inconsistent with the spirit, intent, and language of 8 DCMR, Chapter 9.

The same DC Animal Control provisions (8 DCMR, Chapter 9) also contain clear guidance on the proper location of animals on a property. A property on which chickens may be housed, for example, must be at least 50 feet in any direction from "human habitation" such as a residence. That is more than twice the entire width of the lot on which the Zoning Administrator has seen fit to authorize the kennel use at issue in this case. The Appellants contend that, if a property is to house dogs instead of chickens, the appropriate setback distance would have to be proportionately greater since dogs produce considerably more noise than chickens.

The same provisions further state that animal pens shall be 250 feet from any property line. The dog pen located in the rear exterior yard of the kennel site in this case (which pen is bounded by the property boundary fences on the site) is located zero feet from a residential property line. Clearly even the indoor room used to house dogs at the kennel site would also not meet the setback distance for animal pens that is required by the Animal Control provisions of the DC Code. The Appellants contend that the dog kennel use at 1412 Q Street, NW, is strictly comparable in nature to the animal pen facilities described in Chapter 9 and, accordingly, that a legitimate zoning ruling in this case would have required a kennel use to be setback a significant distance from any surrounding residential properties.[36]

Indeed, the Appellants contend that boarding kennel uses are more alike in substance and essentials to agricultural livestock operations than to mainstream commercial businesses of the type envisaged for the C-3-A district. Kennels raise the same issues as livestock operations regarding noise, odor, waste, health, and animal welfare. What functional difference is there

between maintaining, say, 20 chickens or pigs on a small lot surrounded by townhouses and condominiums and keeping 20 dogs in such a location? In both cases, the animals in question need to be fed, watered and housed with sufficient space for each animal, and large volumes of animal noise, waste and odor are created. The principal functional difference is that dogs in fact generate louder and more frequent noise than chickens and similar to noise to pigs.[37]

The appellants further contend that any zoning determination should consider the welfare of a facility's occupants in assessing the permissibility of locating particular uses at specific sites. The animal cruelty guidelines of the Washington DC Humane Society (the organization contracted by the DC government to carry out animal control functions in DC) are based on the standard that a minimum of 80 square feet is needed to humanely house one large dog. Housing 20 such dogs would require approximately 1600 square feet of space dedicated exclusively to a kennel area. The major part of the 1250 square feet of the structure at 1412 Q Street, NW, is dedicated to the grooming and accessory retail uses authorized by the Zoning Administrator. The remaining small indoor boarding area and outdoor yard (where part of the latter is also dedicated to the storage of waste and to parking) are wholly inadequate to meeting the Humane Society's minimum guidelines for humanely boarding 20 or more dogs. The Appellants believe that the guidelines used to enforce the District's Animal Control laws and regulations should also have factored into the Zoning Administrator's zoning determination in this case.

The Appellants contend that the Zoning Administrator erred in granting the Certificate of Occupancy to a boarding kennel use at this location by failing to apply section 104.1 of the Zoning Regulations and thereby failing to ensure that the high standards imposed by the DC noise and animal control regulations governed his zoning determination in this case. As a result

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[36] Evidence supporting this point will be offered at the Hearing for this Appeal.

of the Zoning Administrator's failure to uphold the high standards set in the District in respect of noise control and animal control, the Appellants contend that the issuance of the Certificate of Occupancy to a boarding kennel use at this site should be overturned by the Board of Zoning Adjustment.

V. The Zoning Administrator erred in granting a Certificate of Occupancy to a 24-hour dog boarding kennel at 1412 Q Street, NW, by failing to consider the DC Comprehensive Plan (10 DCMR sections 102.2, 112.6(d), 1102.1(e), 1104.1, 1108.1 and 1138.1) and, in particular, the Ward 2 Plan of the DC Comprehensive Plan (10 DCMR sections 1325.2 and 1327.1) in determining that a boarding kennel constitutes a matter-of-right use at that site.

In administering and enforcing the Zoning Regulations, DC law is clear that the Zoning Administrator must look to the DC Comprehensive Plan for guidance, as required by statute. The DC Comprehensive Plan, as amended, provides that:

> *"In issuing or processing any ... Certificate of Occupancy, the Zoning Administrator, the Board of Zoning Adjustment, and the Zoning Commission, shall evaluate the proposal in conjunction with the applicable sections of the Comprehensive Plan and the Comprehensive Plan Maps."* (Id. 112.6 (d)).

Numerous provisions of the Comprehensive Plan support the Appellants' contention that the Zoning Administrator's ruling --that a boarding kennel is a matter-of-right use at this site located in the midst of an established residential neighborhood— improperly contravenes the intent and purpose of both the Zoning Regulations and the Comprehensive Plan:

* Part 1 of the Comprehensive Plan notes the need for "...pressures and adverse (development) impacts ... to be controlled to ensure that the character of our neighborhoods is preserved and enhanced" (Id. 102.2);

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[37] Evidence in support of this point will be offered at the Hearing for this Appeal.

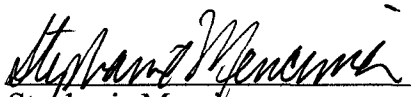
* Part 11 of the Comprehensive Plan (the Land Use Element, which is identified as that element among the several contained in the Plan that should be given greater weight (Id. 112.1)) states that an objective is "to protect residential neighborhoods from disruptive uses" (Id. 1102.1e) including via stated policies to (1) "conserve and maintain the District's sound, established neighborhoods through the strict application and enforcement of housing, building, and zoning codes and the maintenance of the general level of existing residential uses, densities and heights" (Id. 1104.1b); (2) "protect residential neighborhoods from incompatible uses and activities that generate excessive traffic, noise, litter, and other damaging environmental impacts..." (Id. 1104.1i); and (3) "protect ... moderate density residential neighborhoods that are also designated for commercial uses from uses that are incompatible with residential neighborhoods, and from activities, particularly those of a commercial nature, that generate excessive traffic, ... noise, litter and other damaging environmental impacts" (Id. 1104j).

* Part 11 of the Comprehensive Plan further establishes that it is a policy: (1) "to ensure that residential communities are adequately protected from destabilizing impacts from new commercial uses and commercial uses which have undergone substantial operational changes since the adoption of the District's land use regulations ..." (Id. 1108.1(l)); and (2) "to ensure that proposed land use actions are not inconsistent with the Plan (including the Ward Plan elements)" (Id. 1138.1b).

* Part 13 of the Plan (the Ward 2 Plan) states clearly that "the overriding issues for Ward 2 neighborhoods are the threat of commercial encroachment ..." (Id. 1325.2), and establishes that "the city should continue to enforce the Zoning Regulations and recommendations of the ... Plan with respect to negative neighborhood impacts, especially of commercial expansion..." (Id. 1327.1f).

The Appellants contend that the above sections of the Comprehensive Plan clearly require the Zoning Administrator to protect residential neighborhoods such as the Ward 2 R-5-B district adjacent to the kennel site in this case from disruptive and incompatible uses with destabilizing and negative impacts via strict application and enforcement of the Zoning Regulations. In addition to the other reasons why a 24-hour dog boarding kennel is not a matter-of-right use in a C-3-A district that are presented in this brief, the Appellants contend that the required evaluation of the kennel application in conjunction with the Comprehensive Plan should have resulted in a zoning determination that a kennel use at this site would require a use variance and thus the Certificate of Occupancy for the kennel use was improperly issued and should be overturned by the Board of Zoning Adjustment.

Respectfully submitted,



Stephanie Mencimer,
On behalf of the Appellants
1414 Q Street, NW
Washington, DC 20009
(202) 332-2100

January 6, 2004

List of Attachments

Attachment 1	Appellants' Grievance Statement
Attachment 2	Appellants' Preliminary List of Witnesses
Attachment 3	Zoning Map of Area around 1412 Q Street, NW
Attachment 4	Lot Map of properties around 1412 Q Street, NW
Attachment 5	WagTime's Certificate of Occupancy for 1412 Q Street, NW
Attachment 6	Email Communication to Appellants from Zoning Administrator's Office
Attachment 7	Digital Image of WagTime's sign displayed at 1412 Q Street premises
Attachment 8	Digital Image of WagTime's price list displayed at 1412 Q Street premises
Attachment 9	WagTime's advertisement in Washington Blade newspaper
Attachment 10	Email communication from WagTime to prospective client quoting grooming rates
Attachment 11	Documentation of Odor and Run-off from WagTime's Q Street premises, including excerpts from residents' web log; the report of the DC Hazardous Materials Unit; and, digital images of run-off
Attachment 12	Documentation of Noise from WagTime's current Q Street premises, including excerpts from residents' web log, and a letter from Reneau Real Estate (the property owner of WagTime's site) to WagTime

Attachment 13	Report of Miler, Beam, Paganelli, Inc. regarding noise level at WagTime's former 2104 18th Street premises (Report commissioned by WagTime and provided to Q Street residents by another tenant at the 18th St premises)
Attachment 14	Letter to WagTime regarding noise from WagTime's 18th Street landlord, Mr. James Galvagna; and Consent Order signed by WagTime
Attachment 15	Report of Miller, Beam, Paganelli, Inc. regarding noise measurements at the boundary between 1412 and 1414 Q Streets, NW. (Report commissioned by Q Street residents).
Attachment 16	Note on "WagTime Operations Plan" prepared by ANC 2F 01 Commissioner Silverman and cover e-mail

Appellants' Statement of Grievance

Since DCRA granted a certificate of occupancy for Wagtime to open a 24-hour dog boarding and grooming facility at 1412 Q Street NW, we have been deprived of the ability to enjoy our adjacent R-5-B zoned home in the manner intended by the Zoning Regulations and without substantial and unreasonable interference as provided for by law. As the nearest neighbors to Wagtime (and the owners of a rental house at 1415 Q Street), we are subjected to constant and excessive noise disruption, 24-hours a day, seven days a week, from as many as 20 barking dogs, which are often housed outside and are visible from the patio at 1414 Q, which is but inches from the 1412 property. We cannot set foot on our patio to do even routine yard work much less attempt to dine al fresco without suffering a new barrage of nerve-wracking barking right at the edge of our property line. At times, the noise from the dogs continues into the wee hours of the morning, on weekends, disturbing our sleep and that of our neighbors. The noise from the kennel and boarding operation is akin to having a rock concert next door every day—a determination made by Wagtime's own sound engineers at their previous location, from which WagTime were forced to relocate as a result.

The stress caused by the constant dog barking is immense and has left us deeply distressed over the future of our residence in D.C. Our capacity to withstand this kind of abuse from our neighbors is limited, as are our options for moving; the opening of Wagtime has seriously diminished the value of our home.

In addition to the noise, odor from the operation has been so substantial that in August, Wagtime's own employees summoned D.C. fire and rescue officials to investigate the source of "chemical" fumes, which the D.C. hazardous materials officials determined to be likely due to a combination of heat and dog urine. The ammonia fumes from the kennel represent a serious health threat to us, Erik and Stephanie's unborn child, and our neighbors, not to mention a major obstacle to use of our own patio space or opening the windows in our home.

Q Street is zoned only for residential parking, which is already in short supply, and it has no loading zone or parking meters to accommodate commercial traffic generated by the business at 1412 Q. Wagtime employees park commercial vehicles without residential parking permits in front of the store, delivery trucks and customers routinely double-park out front when dropping off and picking up dogs. The horn honking of angry commuters begins at 7 a.m., when Wagtime operations begin to block traffic, and the noise only adds to the problems with the dogs barking. The Wagtime operation has further deprived us and our neighbors of adequate street parking near our homes.

As Wagtime is more akin to an agricultural operation, there is not sufficient accommodation for so many animals on the tiny patch of concrete at 1412 Q, sandwiched as it is among residential uses. As a result, Wagtime has serious problems with wastewater runoff flowing onto public property as they attempt to deal with the odor problem by hosing down the concrete driveway and sending a river of water into the alley. We and other residents must walk through water contaminated with dog urine and other feces to get to our garages and parking spaces. When this runoff begins to freeze as colder weather arrives, the alley may well become impassible.

In summary, the zoning administrator's decision to allow Wagtime to operate a 24-hour dog boarding and grooming kennel at 1412 Q Street as a matter of right, we believe, is not simply erroneous, but has caused substantial damage to our legal rights and quality of life as property owners and residents located in the vicinity of this site. This zoning interpretation has in effect changed the zoning of our property and other neighboring properties located in the vicinity of WagTime to one akin to an industrial (CM or M) zoning district.

Appellants:

Erik Wemple and Stephanie Mencimer
1414 Q Street NW

John Weaver and Forrest R. Smith
1416 Q Street NW

September 22, 2003

Appellants' Preliminary List of Witnesses

In order that the Board of Zoning Adjustment may be informed on the present date to the fullest possible extent of the manner in which the appellants may present the parameters of their case at the January 20 Hearing regarding this Appeal, the following list encompasses (in no particular order of priority) the range of the type of witnesses that the appellants may call upon:

- A former **Zoning Administrator or other zoning expert** whose testimony will be sought as to the broad issue of whether and where kennels should be permitted under the Zoning Regulations in the District of Columbia;

- An operator of, or other professional expert or lay witness on, **dog boarding kennels**, whose testimony will be sought as to the nature and characteristics of boarding kennels;

- An operator of, or other professional expert or lay witness on, **pet shops** whose testimony will be sought as to the nature and characteristics of pet stores;

- An operator of, or other professional expert or lay witness on, **veterinary facilities** whose testimony will be sought as to the nature and characteristics of veterinary facilities;

- An expert or lay witness whose testimony will be sought on the **legal aspects of operating boarding kennels**;

- An expert or lay witness whose testimony will be sought on the **noise levels associated with agricultural livestock operations**;

- An expert or lay witness whose testimony will be sought on the **noise levels associated with vehicles and machinery** including trucks and agricultural machinery;

- A professional expert on **the measurement and interpretation of sound levels in general**;

- A professional expert or lay witness whose testimony will be sought on **the control environment (caged v. cageless operations) of pet shops, kennels and other uses** relevant to this Appeal;

- A professional expert or lay witness whose testimony will be sought on the **insurance and underwriting industries' assessment of the different (salient) characteristics of kennels, pet shops and other uses** relevant to this Appeal;

- A professional expert or lay witness whose testimony will be sought on **the nature and characteristics of spas and so-called pet spas**;

- A professional expert or lay witness whose testimony will be sought on **waste and run-off issues associated with boarding kennels and other uses** relevant to this Appeal;

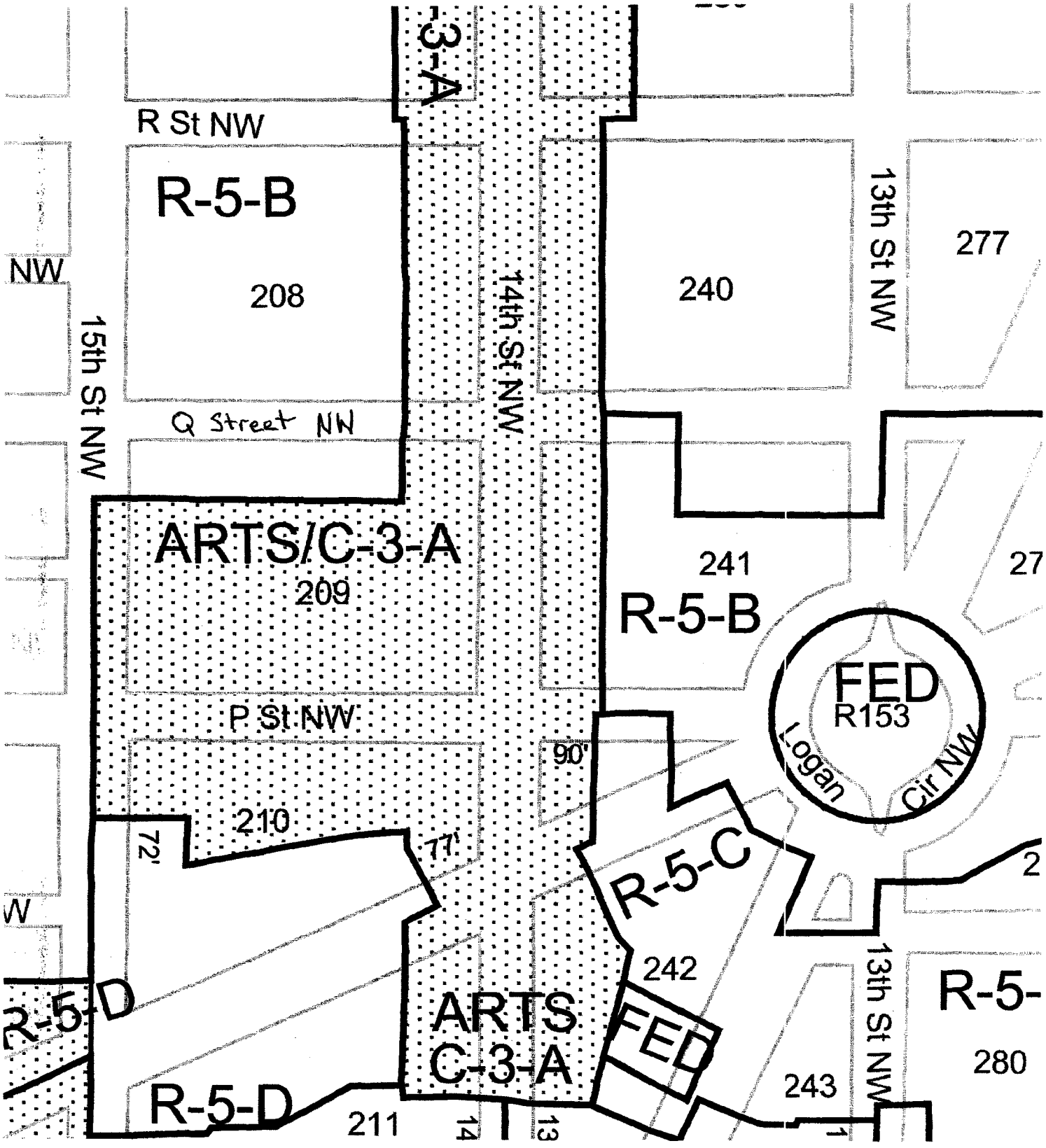
- A resident or residents whose testimony will be sought on **the noise impact** that they have experienced as a result of WagTime's boarding kennel operation;

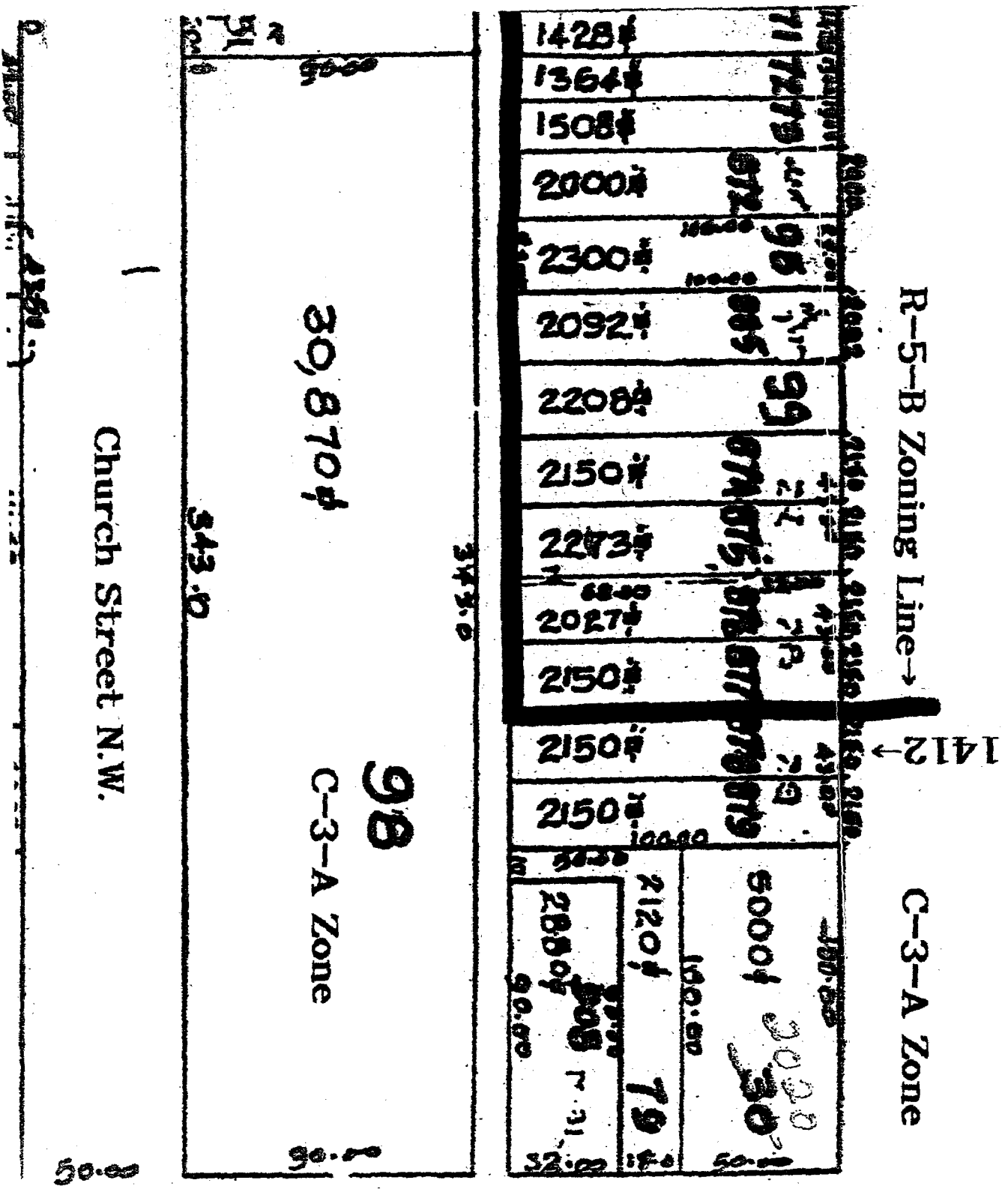
- A resident or residents whose testimony will be sought on **the odor impact** that they have experienced as a result of WagTime's boarding kennel operation;

- A resident or residents whose testimony will be sought on **the waste and/or run-off impact** that they have experienced as a result of WagTime's boarding kennel operation

- A resident or residents whose testimony will be sought on **the escape of dogs from WagTime**.

January 6, 2004


3-A
R St NW
R-5-B
208
240
277
13th St NW
NW
15th St NW
14th St NW
Q Street NW
ARTS/C-3-A
209
241
R-5-B
27
FED
R153
Logan Cir NW
P St NW
90'
210
72'
77'
R-5-C
2
W
242
13th St NW
R-5-
R-5-D
ARTS
C-3-A
FED
280
243
R-5-D
211
14
13
1


Q Street N.W.
R-5-B Zoning Line→
1412←
C-3-A Zone
Church Street N.W.
30,870 sq ft
343.0
98
C-3-A Zone
1428 sq ft
1364 sq ft
1508 sq ft
2000 sq ft
2300 sq ft
2092 sq ft
2208 sq ft
2150 sq ft
2273 sq ft
2027 sq ft
2150 sq ft
2150 sq ft
2150 sq ft
2880 sq ft
2120 sq ft
6000 sq ft
14th Street N.W.

Attachment 5

Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street, NE, Room 2400
Washington, DC 20002
Tel: (202) 442-4400 Fax: (202) 442-4652

C of O

CERTIFICATE OF OCCUPANCY

PERMIT NO.
CO 57903

THIS PERMIT IS VALID ONLY FOR THE PREMISES OF THE PROJECT ADDRESS

DATE : 7/23/2003

ADDRESS	FLOOR(S)	SQUARE / SUFFIX / LOT	
1412 Q ST NW	1ST FL.& MEZZANINE	SQUARE: 0209 (square) -0000- SUFFIX (suffix) LOT: 0878 (lot)	
		WARD: 2	ZONE: CM3

PERMISSION IS HEREBY GRANTED TO: CORPORATION : WAGTIME LLC ID No.: L08504

TRADING AS:

APPROVED USES: OTHER - SEE DESCRIPTION

PREVIOUS USES: OFFICE SPACE

TYPE	OCCUPIED SQ. FOOTAGE	OCCUP. LOAD	EXPIRATION DATE
USE CHANGE	1,25	TP	NONE

DESCRIPTION OF USE:
24HR. DOG BOARDING AND GROOMING WITH ACCESSORY RETAIL SALE OF PET SUPPLIES (C OF O TO EXPIRE 1-31-04)

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated. VALID ONLY for the premises at the above address or part thereof, and for the purpose(s) indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of occupancy, ownership or business, or part of premises used thereof, will render this certificate VOID and a NEW Certificate must be obtained.

David A. Clark
DIRECTOR

PERMIT CLERK:
THINGOC MACKOSN

Robin Hope

Department of Consumer & Regulatory Affairs
District of Columbia

-----Original Message-----

From: **Ogunneye, Faye (DCRA)** [mailto:Faye.Ogunneye@dc.gov]
Sent: Wednesday, June 04, 2003 5:57 PM
To:
Cc: Stephanie Mencimer
Subject: RE: Pet Spa in a C-3-A zone

Further to our phone conversation, this is to advise you that in a C-2 zone (DCMR-11, 721.2) the following service establishments are matter of right uses

1) Public bath, physical culture, or health service
2) Veterinary hospital

In same zone (DCMR-11, 721.3) a Pet shop is matter of right use as a retail establishment.

DCMR-11, 721.4 states that "other service or retail use similar to that permitted in 721.2 and 721.3,... in a C-2 district as a matter of right.

It is my opinion and that of the Acting zoning administrator that a pet spa is allowed under the preceding guidelines in a C-2-A zone and all subsequent zones.

On January 5, 2004, Ms. Ogunneye informed an authorized representative of the appellants that, following Ms. Ogunneye's December 31, 2003 discussion with the Zoning Administrator regarding this case, the above text was the final and official text of the Zoning Administrator's ruling in this case.


WAGTIME
202.234.8825
www.WAGTIME.com

MENU OF SERVICES

All dogs visiting wagtime must provide current vaccination records and D.A.P. license.

GROOMING

Our groomers and staff is dedicated to keep your pet in top-top, stress free condition.
Prices vary with the breed, size and service. Please inquire.

BOARDING

Our boarding facility is customized to fit your dog's needs.
Long term boarding and multiple pet discounts may apply.

Toy breeds under [illegible]	$40 per night
Small breeds [illegible]	$45 per night
Medium breeds [illegible] 50 lbs.	$60 per night
Large breeds over 50 lbs.	$50 per night

DAYCARE

Carefully designed with friendly, social dogs in mind.
Special package rates and delivery service available

Toy breeds up to 10lbs.	$24 per day/$16 half day
Small breeds up to 25lbs.	$26 per day/$18 half day
Medium breeds up to 50 lbs.	$28 per day/$20 half day
Large breeds over 50 lbs.	$31 per day/$22 half day
Hourly rates	$4 per hour
Pick up/Drop off	$5 within a two mile radius
All packages [illegible] items and extras extra charge	

[illegible] WALKING

Our carefully trained staff will take your pampered pet on a power walk.

One 30 minute power walk	$25
Work week package (5 power walks)	$60

KITTY CARE

Let our friendly, attentive staff take great care of your furry friend.
One visit includes 30 min. of frolic and litter cleaning! $15

AND STUFF....

Our boutique carries a nutritious assortment of food and snacks for your convenience as well as large selection of unique gifts, collars, carrying bags and much more.

Attachment 9

WAG TIME

BOARDING, DAYCARE, GROOMING & COOL STUFF

New Location Coming Soon!

Only indoor/outdoor daycare facility in town with pet pickup & delivery

- *Cageless Daycare & Boarding*
- *Professional Grooming Salon*
- *Home Feline Care*
- *Boutique Carrying Unique Gifts For You & Your Pal*

1412 Q Street N.W.
(202) 234-9825
Lwagtime@aol.com



From: LWAGTIME@aol.com
Sent: Friday, December 19, 2003 1:59 PM
To: kterrel1917@yahoo.com
Subject: Re: aerdales

Karl,

Thankyou for inquiring about Wagtime Pet Spa & Boutique. I would be happy to give you some references for our grooming salon. We have been in business for 3 years now. Our grooming salon has brand new state of the art equipment and we have four professionally trained groomers and our salon manager's name is Brannon Carrier. You are welcome to call him any time with any questions you may have.

The daycare and boarding is cageless and the only indoor/otdoor facility in N.W. Washington D.C. Many of our clients do long term boarding or daycare everyday which includes a pick up or drop off. There are many options for your dogs that I can go over with you. My partner Ofer and I are always here as well as a 24 hour staff always available to pamper your doggies.

Why don't you call and speak w/ Brannon and give it a try. We will give you 20% off for the first groom so you can be sure you like it. The price for an aerdale (assuming they have no matts) is around $65.00. Please call me or Brannon to discuss.
(202) 234-8825.

Hugs to your dogs!
Lisa Schreiber, owner
Wagtime, LLC

Attachment 11

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Paper Folding Machines
Martin Yale & Premier paper folders
Free next-day delivery over $49!

100% Odor Elimination
Air purifiers remove all odors. 100% money-back guarantee.

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The purpose of this web log is to establish a central documentary record of the external impacts experienced by neighboring property owners & residents as a result of use of the property located at 1412 Q Street, NW, Washington, DC 20009 by the dog kennel business named WagTime, LLC

Q Neighborhood Coalition Web Log

12/11/2003

6...Thursday, December 11, 2003.....Odor

Resident notices overpowering odor of dog grooming chemicals from the back of the WagTime facility. The odor is intense even in the cold.

- posted by Resident B@ 4:53 PM

5...Wednesday, November 5, 2003.....Odor

Odor from Wagtime is increasing as Wagtime is venting odors from their dog grooming operation through the front of the building. The odor of wet dog and grooming chemicals can be detected in the homes of the immediate neighbors.

- posted by Resident F@ 10:45 AM

4...Tuesday, October 14, 2003.....Odor

At approximately 2:48 pm one of WagTime's owners reported a hazardous materials emergency at WagTime's premises at 1412 Q Street, NW to the DC emergency 911 number. The WagTime owner reported experiencing strong odors of what he thought was ammonia. The DC Fire Department's Hazardous Materials Unit (HMU) responded at 2:55 pm with approximately three ladder trucks, two rescue vehicles and several other fire department vans. Lt. Kenneth Moore of HMU reported that HMU investigated, removed some containers of paint thinner, could not determine a precise source for the odor, observed approximately 20 dogs on site at WagTime's premises, and advised WagTime's owner that the possible source of the odor may have been a combination of heat and dog urine (see DC Fire & EMS Department's Incident Report No. 2003-0091682-000]. Upon the release to residents on August 28 of HMU's incident report, this hazardous materials call-out incident was reported Dr. Peggy Keller (DoH), Deputy Director Gordon (DoH) and Deputy Director Lewis (DCRA).

- posted by Resident D@ 10:31 PM

Attachment (cont.)

3.....Tuesday, August 12, 2003.....Odor

A neighbor several houses down from WagTime experienced strong and persistent odors of dog urine in the exterior patio and parking area of his property that was coming from the direction of WagTime's exterior yard. Loud and intermittent noise of dogs barking coming from the same direction over a period of 1-2 hours. This odor and noise was not reported to MPD, DCRA or DOH.

- posted by Resident C@ 10:23 PM

2.....Sunday, August 3, 2003.....Odor

A neighbor of WagTime experienced strong and persistent odors of dog urine coming from the direction of WagTime's exterior yard. This odor was not reported to DOH.

- posted by Resident B@ 10:16 PM

1.....Thursday, July 24, 2003.....Odor & Runoff

In the early afternoon, a neighbor experienced strong chemical odors in an exterior courtyard.

At approximately 2:00 pm a resident observed WagTime staff hosing and mopping water and dog waste from the rear exterior yard at WagTime's premises into the public alley behind the property. A large standing pool of water had formed in the alley behind 1412 Q and down the alley.

No photographs were taken but both the run-off and odor were reported to Dr. Peggy Keller of DC Department of Health (DOH) who inspected WagTime's premises on Monday, July 28. Dr. Keller discovered that the drain in the rear yard was blocked and that the drain had no surrounding drain slop (of the kind that might prevent overflow running off into the alley).

Dr. Keller did not address the odor from WagTime's rear yard that was experienced in the neighboring courtyard.

- posted by Resident A@ 8:32 PM

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DISTRICT OF COLUMBIA
FIRE AND EMERGENCY MEDICAL SERVICES DEPARTMENT

FIRE PREVENTION BUREAU
441 4TH ST. NW
WASHINGTON, D.C. 20001
PHONE (202) 727-1600
Fax 673-6497 or 727-3238

Request for Information / Freedom of Information Act (FOIA)

DATE 8/25/03

Request No: _____

Application Fee $10-

I hearby make application under the Freedom of Information Act to obtain a copy of the following record(s) kept on file at the District of Columbia Fire Prevention Bureau:

Fire Report: Date of Incident : Aug 13, 03 Incident Number: 009/682-000
Location of Incident : 1417 Q St
Information requested by : Erik Wemple

OCCUPANT / OTHER _____ Phone _____
OWNER / REP. _____ PHONE _____ FPB REP. _____

FOIA / Fire Inspection Report / Environmental Request(s) : Type of facility : _____

Location / Address : _____

Approved

ERIK C. WEMPLE
STEPHANIE A. MENCIMER
1415 Q ST NW
WASHINGTON, DC 20009

1316

8-25-2003 65-270/550
Date

Pay to the Order of DC Treasurer $ 10.00

Ten & 00/100 Dollars

SUNTRUST
SunTrust Bank

PORTFOLIO BANKING

For _____ E C Wemple MP

REV. 08

© HARLAND 2002

Incident Report

2003-0091682-000

Washington, DC Fire & EMS 1

Basic	
Alarm Date and Time	14:47:59 Wednesday, August 13, 2003
Arrival Time	14:55:06
Controlled Date and Time	
Last Unit Cleared Date and Time	16:10:47 Wednesday, August 13, 2003
Response Time	0:07:07
Priority Response	Yes
Completed	Yes
Fire Department Station	09
Incident Type	671 - Hazmat release investigation w/ no hazmat
Aid Given or Received	N - None
Alarms	1
Action Taken 1	45 - Remove hazard
Apparatus - Suppression	8
Personnel - Suppression Personnel	32
Property Loss	$0.00
Contents Loss	$0.00
Property Value	$0.00
Contents Value	$0.00
Hazardous Material Released	0 - Special hazmat actions required or spill greater than 55 gallons
Property Use	UUU - Undetermined
Location Type	Address
Address	1412 Q ST NW
City, State Zip	WASHINGTON, DC 20016

Authority	
Reported By	000724 - MOORE, KENNETH R 15:38:12 Friday, August 22, 2003
Officer In Charge	000058 - BASHORE, JAMES M 22:20:26 Friday, August 22, 2003
Reviewer	- ,

Narratives	
Narrative Name	CAD Narrative
Narrative Type	CAD Narrative
Author	- ,
Narrative Text	F030091682 HAZ HAZARDOUS MATERIALS STRONG SMELL OD AMONIA. ** LOI SEARCH C
Narrative Name	HMU NARRATIVE
Narrative Type	Incident
Narrative Date	16:08:18 Friday, August 22, 2003
Author	000724 - MOORE, KENNETH R
Author Rank	LIEUT
Author Assignment	1
Narrative Text	HMU AOS to find dog kennel type business w/ approximately 20 dogs. Owner stated that he smelled a strong odor of what he thought was ammonia. HMU investigated and found

Narratives
no source. HMU utilized Drager and poly- tube w/ no results. HMU removed two open paint thinner containers. T-9 ventilated and the odor dissipated. Advised owner that no source was found. Also advised owner that the possible source of the odor may have been a combination of heat and dog urine.

End of Report

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Martin Yale & Premier paper folders Free next-day delivery over $49!

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Q Neighborhood Coalition Web Log

12/11/2003

6....Tuesday, October 14, 2003.....Run-off

At 12:30 p.m., a Wagtime staffer had the garage door open to the alley and was hosing all sorts of junk into the alley, creating a significant flow. Workers for the resident and the neighboring construction workers had to walk through the runoff in the alley to do their work.

- posted by Resident F@ 2:46 PM

5....Friday, October 3, 2003.....Run-off

Resident observed a gush of water flowing out of Wagtime into the public alley behind Q Street. The garage door of the building appeared to be wide open and the staff was hosing waste from the driveway directly on to public space. The alley was subsequently flooded with foamy water, piles of dog hair as well as paint chippings off Wagtime rear yard, with water flowing half way down the block, behind numerous residents' homes. Resident reported the incident to Dr. Peggy Keller at the D.C. Department of Health, as well as her boss, Ted Gordon and has not received a response.

- posted by Resident B@ 6:31 PM

4....Monday, August 25, 2003.....Run-off

During the afternoon resident observed a WagTime employee hosing down the rear exterior yard of WagTime's premises at 1412 Q Street, NW and an associated run-off from the premises which formed a standing pool of water in the public alley behind 1412 and 1414 Q Street, NW. This run-off was photographed but was not reported to DOH.

- posted by Resident E@ 6:40 PM

3....Wednesday, August 20, 2003.....Run-off

At 7:50pm while walking down the public alley that runs between Q and Church Streets, resident observed a pool of standing water that had run off into the alley from the rear of WagTime's premises at 1412 Q Street, NW. Both the pooled water and the surrounding area contained large chunks and balls of matted dog hair. This run-off and solid waste was not photographed or reported to DOH / DPW.

- posted by Resident F@ 10:45 PM

2....Wednesday, August 13, 2003.....Run-off

Between 3:00 pm and 4:00 pm resident exited their home at and entered the rear public alley where resident observed a large body of standing water that had run off from the rear of WagTime's adjacent premises (1412 Q Street, NW) and pooled in the alley. The water contained large balls of matted dog hair. Photographs were taken the pooled water and dog hair. This run-off and trash was not reported to DOH or DPW.

- posted by Resident D@ 10:26 PM

1.....Thursday, July 24, 2003.....Odor & Run-off

In the early afternoon, a neighbor experienced strong chemical odors in an exterior courtyard.

At approximately 2:00 pm a resident observed WagTime staff hosing and mopping water and dog waste from the rear exterior yard at WagTime's premises into the public alley behind the property. A large standing pool of water had formed in the alley behind 1412 Q and down the alley.

No photographs were taken but both the run-off and odor were reported to Dr. Peggy Keller of DC Department of Health (DOH) who inspected WagTime's premises on Monday, July 28. Dr. Keller discovered that the drain in the rear yard was blocked and that the drain had no surrounding drain slop (of the kind that might prevent overflow running off into the alley).

Dr. Keller did not address the odor from WagTime's rear yard that was experienced in the neighboring courtyard.

- posted by Resident A@ 8:32 PM

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7/19/2003
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7/19/2003
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5:29 PM


8/13/2003


8/22/2003


10/18/2003

Attachment 12

Paper Folding Machines
Martin Yale & Premier paper folders
Free next-day delivery over $49!

Noise problems solved
Learn what the pro's use. Expert advice.

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The purpose of this web log is to establish a central documentary record of the external impacts experienced by neighboring property owners & residents as a result of use of the property located at 1412 Q Street, NW, Washington, DC 20009 by the dog kennel business named WagTime, LLC.

Q Neighborhood Coalition Web Log

12/11/2003

36.....Thursday December, 11, 2003.....Noise

An adjacent neighbor reported dogs have been barked steadily and loudly for an hour (12:30 to 1:35pm). The dogs were inside WagTime and could be heard by resident

- posted by Resident C @ 1:02 PM

35.....December 9, 2003.....Noise

An adjacent neighbor reported the dogs have been barking loudly all day long. Right now, there are 16 mostly large dogs locked outside in the yard at Wagtime with no staff. A WagTime Staffer simply yells out the window at them occasionally when they start barking.

Around 5 pm, an adjacent neighbor was awakened by dog barking from the backyard at WagTime even though all the windows and storm windows were closed.

- posted by Resident D @ 3:27 PM

34.....Friday December 5, 2003.....Noise

At 4:30 pm, the dogs started howling, fighting and barking at Wagtime. The noise was loud enough to be heard strongly in an adjacent neighbor's living room, even though the dogs were inside. They continued to bark and fight for an hour.

- posted by Resident B @ 5:58 PM

33....Sunday November 30, 2003.....Noise

At 11:30 am, an adjacent neighbor was jolted awake by the sound of dogs fighting. The dogs continued to make noise, which was only compounded by the yelling of the staff telling them to shut up. The barking and fighting continued for a half an hour before subsiding.

- posted by Resident D @ 12:01 PM

32.....Wednesday November 26,2003.....Noise

Despite Wagtime's promises to keep the dogs inside until 9 am, adjacent neighbors heard the dogs at 7:30 am from their bedroom. The barking continued for about an hour.

- posted by Resident C @ 1:41 PM

31....Thursday, November 20, 2003.....Noise

An adjacent neighbor reported the dog barking between 2:00 - 3:00 PM was unbearable and so loud that even the construction workers from Metropolis across the alley from WagTime started to shout to shut the dogs up. A number of dogs were roaming around the yard and continuously barking; the resident didn't see any staff present.

- posted by Resident I @ 7:51 PM

30....Tuesday, November 18, 2003.....Noise

Starting at 9 a.m., an adjacent resident noted the dogs were barking very loudly running in and outside of the building at Wagtime freely with no staff around. The windows are also open so the noise is coming from the building as well as the yard. After an hour of barking, the resident called the police non-emergency number to file a noise complaint. The noise from the dogs was so loud that the resident had difficulty hearing the police dispatcher.

It's now 2 p.m. and the police never came. They did call, however, to ask more questions about the nature of the business and said that they would also refer the call to animal control.

- posted by Resident A @ 10:12 AM

29....Friday, November 14, 2003.....Noise

At 10:15 p.m., adjacent neighbors called Reneau Realty's emergency line to report that the dogs were barking furiously and had been for several hours, apparently because no staff was on site at Wagtime. A guest in the neighbor's house was awakened during the night because of the barking.

- posted by Resident E @ 9:30 AM

28...Tuesday, November 11, 2003.....Noise

The dogs at WagTime have been barking loudly and steadily throughout the day. An adjacent neighbor could hear them in the dining room through the walls. Around 5 o'clock, the resident called Bruce Mosley, the neighborhood stabilization officer for the neighborhood and left a message asking him to follow up on the noise complaints, as DCRA Director Dave Clark told the resident personally that DCRA will do noise enforcement and would come and write a ticket. Obviously, no one was in today with the holiday, but hopefully Mr. Mosley will call tomorrow and the first official noise check may be arranged.

- posted by Resident C @ 5:10 PM

27...Wednesday, November 5, 2003.....Noise

A resident from several properties down was so disturbed by the loud dog barking at Wagtime at around 11 a.m., that the resident went to WagTime's front window and yelled at the staff to quiet the dogs. The staff member inside merely laughed at him and did nothing about the dogs. The resident then called Clark Ray, the neighborhood liaison to the mayor's office and complained about the noise and asked the city to take action. The office indicated it would do nothing about the problem and suggested the resident call the police, at which point the resident informed Mr. Ray that the police won't come and have already told residents that they will not issue any noise citations to Wagtime. Mr. Ray did not indicate that he would do anything else to resolve the problem.

- posted by Resident B @ 11:36 AM

26...Wednesday, November 5, 2003.....Noise, Odor

All week the dogs have been barking loudly throughout the day. On Tuesday November 4, an adjacent resident could hear the dogs from the front sidewalk. On November 5, both an adjacent neighbor and one several properties west of WagTime could also hear the dogs clearly from the sidewalk around 10:15 am. The noise from the rear of building was so loud that an adjacent neighbor called Reneau Realty and left a message about the noise. Another neighbor from several properties west of WagTime was so disturbed by the barking that this resident shouted in an attempt to quiet the dogs. The noise was clearly bothering several residences.

- posted by Resdent E @ 10:45 AM

25....Monday, November 3, 2003.....Noise and city response

The dogs barked all day long loudly enough to interrupt office conversations by an adjacent resident. The resident called the city noise people again to see what they might recommend. The resident spoke with Bruce Mosley, the special assistant to the neighborhood stabilization office (202/497-6028). He informed the resident that "dog barking is a police matter. There is nothing in our regs that governs dogs making noise." He then passed me on to the noise inspector who also said that he had no authority to do anything about dog noise but that the "police have the authority to issue a ticket." The resident informed the noise inspector and Mr. Mosley that the police refuse to do the job and insist that this is a DCRA issue and that the dispatcher won't even send police out to do anything when residents make complaints. The resident asked what the inspector and Mr. Mosley recommended the neighborhood do. They didn't have any suggestions. At 5:15, the resident finally tried the police again and called the non-emergency number. The dispatcher this time said she'd send the

police to see about the noise.

- posted by Resident D @ 3:56 PM

24....Wednesday-Thursday, October 29-30, 2003.....Noise

Last night the dogs were barking loudly late into the evening, after 8 p.m. At 4:30 a.m., an adjacent resident could still hear the dogs barking. The noise lasted for at least an hour and could be heard throughout the house.

- posted by Resident C @ 2:57 PM

23....Saturday, October 18, 2003.....Noise

The dogs were barking before 9:00 am as has become usual on the weekends. After about an hour of barking, an adjacent resident called and left a message complaining about the barking with Paul Reneau's office around 10:30. The dogs continued to bark for another hour, and the resident saw them eating trash in the back and wallowing in feces as they were unattended. The resident took photos emailed them to both the Humane Society and the Health Department. Peggy Keller from the Health department wrote back asking whether the society was going to investigate. As of Oct. 28, the resident had heard nothing from them.

- posted by Resident C @ 11:34 AM

22....Thursday-Saturday, October 9-11, 2003.....Noise

Last weekend 10/9-11, dogs were barking late at night. A resident several properties westward from WagTime was awakened by the noise and unable to sleep for the rest of the evening.

- posted by Resident H @ 10:46 AM

21....October 12, 2003 continued...More noise, dogs left unattended

The dogs have been barking on and off all day, but they've been going continuously now for the past half-hour (it's now almost 7 p.m.). The noise is coming from inside the building, where all the windows are open. It's unclear whether any staff are in the building.

At 8 p.m., after nearly two solid hours of nonstop dog barking (the dogs really sounded miserable) an adjacent resident went next door and discovered that no one was at Wagtime, and the staff had left a sign on the door saying they had closed at 6 p.m., and if people wanted to pick up their dogs they should call the number on the sign. A little while later, we heard furious pounding on the doors there, both back and front, and an angry customer was standing outside. She was trying to retrieve her dog, and apparently the sign said "please knock" to get your dog, but there was still no staff inside, and the dogs were barking like mad. the woman apparently called someone, and around 8:30 a staff person showed up to free her dog. The staff people apparently left around 9 or 9:30 and the barking started up again in earnest until at least 10 p.m.

- posted by Resident C @ 6:49 PM

20....Sunday, October 12, 2003.....Noise

The dogs started barking loudly this morning around 9 a.m.. This has been the pattern now for several Sundays. The dogs were loud enough to wake adjacent residents where all the windows were closed. They barked loudly and nonstop for about one hour, and continued to bark loudly intermittently throughout the morning preventing the residents from using their patio. The dogs also barked inside the building and could be heard from inside the adjacent residence as Wagtime keeps the windows in the back of their building open at all times, making the noise problem worse.

- posted by Resident C @ 12:32 PM

19....Saturday, October 11, 2003..... Noise

An adjacent resident reported the dogs barked loudly all day long. The resident noted there appeared to be about 20 dogs outside on the back driveway of Wagtime for most of the day.

- posted by Resident G @ 12:27 PM

18....Friday, October 10, 2003.....Noise

The dogs barked loudly and furiously this morning for an hour, starting at 9 a.m. sharp and could be heard from both the back and front of the building. At 9:30, a resident adjacent to WagTime called Reneau Real Estate to report the problem and asked them to call WagTime about the noise. The noise continued for another 20 minutes, at which time the resident called the Neighborhood Stabilization office to report the problem and to see whether they intended to do anything about it. No one answered the phone and the resident has not heard back from anyone there. The office has also not responded to earlier calls.

- posted by Resident C @ 10:52 AM

17....Tuesday, October 9-10, 2003.....Noise

A resident several properties westward of WagTime reported the overnight barking disturbed a house guest. The barking was so loud it could be heard from the guest bedroom and prevented the guest from sleeping.

- posted by Resident G @ 12:56 PM

16....Tuesday, October 7, 2003.....Noise

The dogs started barking loudly this morning shortly before 9 a.m. waking a resident adjacent to WagTime. The dogs barked continuously and loudly until 10:30 when a staff person yelled loudly at them and the quieted down. The dogs again started to bark furiously when the resident went out onto the resident's patio and into the carriage house. The dogs barked loudly and intermittently for the morning. The noise was not reported

specifically to MPD, but the resident did place a follow up call to the assistant neighborhood stabilization coordinator at DCRA to see what progress had been made on an earlier complaint. The resident received no response.

- posted by Stephanie @ 12:56 PM

15....Wednesday, September 24, 2003.....Response to noise complaints

On Sept. 24, a resident adjacent to WagTime received a letter from Alissia Leonard, the property manager at Reneau Real Estate, which had been delivered to Lisa Schreiber at Wagtime. The letter stated that Ms. Leonard could hear the dogs very clearly on the message the resident left at the office and stated that she could understand the resident's "annoyance with the situation." She asked Wagtime to "consider not releasing the dogs in the rear of the building for long periods of time, thereby not allowing the barking to disturb your surrounding neighbors."

- posted by Resident B@ 6:27 PM

14....Tuesday, September 23, 2003..... Noise

The dogs at Wagtime were going barking extremely loudly for more than an hour this morning. An adjacent resident called MPD to report the problem, but the dispatcher at 311 refused to send the police, insisting that it was not her problem, as this was a commercial establishment and the police could--and would--do nothing. As a result, the resident contacted the Mayor's citywide call center and asked to be connected to the regulatory office in charge of noise complaints. The resident spoke with someone at 442-4325 and relayed the problems and was told that the office would look into it. The resident also called Reneau Real Estate because the dogs were barking so loudly it was disrupting the resident's ability to work and left a message complaining about the noise.

- posted by Resident B @ 6:27 PM

13....Monday, September 22, 2003..... Noise

The dogs barked loudly and constantly today, disturbing an adjacent resident and workers hired to install doors at the resident's home. Workers commented the noise was so bad they wouldn't live in the home. The noise was not reported to any agency.

- posted by Resident G @ 6:24 PM

12....Sunday, September 7, 2003.....Noise

Throughout the day, an adjacent resident was disturbed by barking outbursts from about 6-10 dogs. At some points, the barking was so loud that the resident had to keep the windows shut and stay indoors. The resident is finding that the barking is preventing the residents of the house from using their backyard.

- posted by Resident C@ 5:43 PM

11....Sunday, September 7, 2003.....Noise

Sporadic outbreaks of noise from barking dogs occurred throughout the day and disturbed residents inside their home across the street and several properties westward from WagTime. This noise came from the direction of the rear yard of WagTime's premises at 1412 Q Street, NW

At 9:15 am, 10:50 am, 1:55 pm, 2:05 pm, 2:26 pm, 3:39 pm, 4:04 pm and 4:26 pm, respectively, outbreaks of dog barking noise began and lasted for 1-4 minutes on each occasion.

Between 9:45 am and 10:10 am, the dog barking noise was virtually continuous for 25 minutes. Between 2:12 pm and 2:22 pm, the dog barking noise continued for almost 10 minutes.

This noise was not reported to MPD or DCRA.

- posted by Resdient C@ 6:32 PM

10....Saturday, September 6, 2003.....Noise

A sustained outbreak (20 minutes) of noise from barking dogs occurred at approximately 3:10pm. The noise came from the direction of the rear yard of WagTime's premises and was heard clearly from the inside of a home across the street and several properties westward from WagTime. At least 4 different dogs were heard barking and the barking was still continuing at 3:30pm when the resident left the home to go to an appointment. This noise was not reported to MPD or DCRA.

- posted by Resident F @ 6:21 PM

9....Friday, September 5, 2003.....Noise

A resident several properties westward from WagTime was preparing to use his exterior deck on Friday afternoon. Around 4:00 pm the resident heard very loud barking from WagTime's premises. By looking through an eastern opening on the deck, the resident saw 5 or 6 dogs barking in WagTime's exterior yard. The resident called out over the eastern side of his deck for the dogs to quiet down or he would report the noise to the police. After a few minutes a staff member appeared, quieted the dogs, and took some of them inside at approximately 4:30 pm. This event was not reported to MPD/DCRA.

- posted by Andrea @ 10:23 PM

8....Sunday, August 31, 2003.....Noise

A house guest of an adjacent neighbor was disturbed during the evening by loud barking coming from WagTime's premises at 1412 Q Street, NW. Noise from dogs barking and howling at WagTime's premises continued throughout the night until Monday morning. This noise was not reported to MPD or DCRA.

- posted by Resident D@ 6:43 PM

7....Sunday, August 24, 2003.....Noise

Noise from dogs barking at WagTime's premises at 1412 Q Street, NW, was reported by neighbors on both sides of the business on a continuing basis throughout the day.

At approximately 9:00 pm residents reported the continuing dog barking noise to MPD's non-emergency number. Officer Kennedy responded at around 9:15 pm and from the front of WagTime's property could hear the noise from dogs barking inside the premises. After determining that there were no WagTime employees located at WagTime's premises, Officer Kennedy informed the residents that there was nothing he could do about the continuing dog barking noise and that this was a regulatory matter that they needed to take up with DCRA.

On Monday, August 25, Sunday's dog barking noise and MPD's response were reported by residents to Denzil Noble and Theresa Lewis of DCRA, Lt. Groomes and Sgt. Fitzgerald of PSA 309, and to Clark Ray, the Ward 2, Neighborhood Services Coordinator.

This report was also passed on to David Clark of DCRA who responded that DCRA would collect a set of random ambient noise readings so as to establish a baseline against which to issue noise citations to WagTime for future noise infractions.

- posted by Stephanie @ 6:56 PM

6....Friday, August 22, 2003.....Noise

At 9:15 am a loud outbreak of noise from dogs barking occurred and disturbed a resident adjacent to WagTime. The dog barking noise came from the direction of WagTime's rear exterior yard at 1412 Q Street, NW. This noise was not reported to MPD or DCRA.

- posted by Resident C @ 10:46 PM

5.....Tuesday, August 12, 2003.....Odor & Noise

At approximately midday a resident several properties westward of WagTime experienced strong and persistent odors of dog urine in the exterior patio and parking area of his property that was coming from the direction of WagTime's exterior yard. The resident also noted loud and intermittent noise of dogs barking coming from the same direction over a period of 1-2 hours. This odor and noise was not reported to MPD, DCRA or DOH.

- posted by Resident E @ 10:23 PM

4.....Sunday, August 10, 2003.....Noise

In the evening a resident was walking past WagTime's premises at 1412 Q Street and heard loud barking

coming from the inside of the building occupied by WagTime. The resident approached WagTime's building on the public space at the front of the property and observed through the window 3 dogs barking loudly inside the premises without supervision. This noise was not reported to MPD or DCRA.

- posted by Resident D @ 10:19 PM

3.....Friday, August 8, 2003.....Noise

While entertaining guests on the rear exterior deck of his home several properties westward of WagTime's premises, a resident experienced continuing loud noise from barking dogs coming from the rear exterior yard of WagTime's premises. This noise was not reported to MPD or DCRA.

- posted by Resident C@ 10:18 PM

2.....Wednesday, August 6, 2003.....Noise

During the afternoon between 2:00 pm and 4:00 pm, a resident several properties westward of WagTime's premises at 1412 Q Street attempted to use his rear exterior deck to entertain friends. Noise from dogs barking was coming from WagTime's rear exterior yard. This noise was so loud that the party had to abandon their location on the exterior deck and relocated inside the house. The dogs barking and WagTime staff shouting at the dogs could still be heard from inside the home. This noise was not reported to MPD.

- posted by Resident B@ 10:17 PM

1.....Thursday, July 24, 2003.....Noise

A sustained outbreak (15 minutes) of noise from barking dogs and people shouting occurred at approximately 12 noon. The noise came from the direction of the rear yard of WagTime's premises and was heard from inside a residents home across the street and three properties westward from WagTime's premises. This noise was not reported to the DC Metropolitan Police Department (MPD) or the Department of Consumer & Regulatory Affairs (DCRA).

- posted by Resident A @ 8:11 PM

POWERED BY BLOGGER

RENEAU REAL ESTATE LLC
1811 S Street N.W., Suite 100
Washington, DC 20009
TEL: 202-797-0852
FAX: 202-797-0772
Email: MrPReneau@aol.com

September 24, 2003

Lisa Scheiber
Wagtime, LLC
1412 Que Street, NW
Washington, DC 20009

Dear Ms. Scheiber:

Yesterday, I received a call from one of your neighbors concerning several hours of excessive barking in the rear yard. This tenant was in her home and I could hear the dogs very clearly and understand her annoyance with the situation..

We understand that this is a dog daycare and you must allow the dogs to run and get fresh air, but you must have consideration for your neighbors and allow them the quiet enjoyment of their home as you would want in yours. Therefore, we are requesting that you consider not releasing the dogs into the rear of the building for long periods of time, thereby not allowing the barking to disturb your surrounding neighbors.

Very truly yours,

Alissa D. Leonard

Alissa D. Leonard

cc: Surrouning Neighboirs

Attachment 13

MBP MILLER, BEAM & PAGANELLI, INC.
CONSULTANTS IN ACOUSTICS, VIBRATION & AUDIOVISUAL SYSTEM DESIGN

March 5, 2003

Lisa Chreiber
Wag Time
2104 18th Street NW
Washington, D.C. 20009

RE: NOISE LEVELS FROM DOG CARE

Dear Ms. Chreiber:

A site survey was performed on February 11, 2003 to address noise transmission issues from Wag Time to the second level apartment above. Simultaneous measurements were made to estimate the NIC (noise isolation class) rating of the existing construction. In our letter of February 13, 2003 we detailed our analysis and recommendations. However, we understand you also require the measured noise level in the apartment above. The noise level measured in the above apartment was 48 dBA when the level in Wag Time measured 101 dBA. Feel free to call regarding any questions on the above measurements.

Sincerely,

Kelton Mitchell
Consultant

Nov 1, 02

Hi Jim,

I'm writing concerning the the noise from Carpeting Corp that can be heard from tenant on second floor. He has complained the the noise from your business is unbearable. He can't sleep that he can't sleep at night because of the noise from the shop.

As you know this has been a problem for some time. After I notified you that according to our lease it is your responsibility to make sure that no noise from your business can be heard by 2nd floor tenant you said you would take care of it. You went so far as to tell me that the sound proofing was being done as we spoke on the phone about the problem. When I looked above dropped ceiling about the carpet I could not see where any improvement had been undertaken.

As a result you have put me in an untenable position. I have

a lease with 3rd floor tenant that guarantees him "peaceful and quiet use" of his premises.

As this has been an issue for many months and nothing has been done to fix the problem you leave me no choice. Therefore with this letter I am giving you thirty days notice that as a result of the default by you of this lease according to section 5 paragraph (g) of the lease that if the problem is not resolved to the complete satisfaction of myself & the tenant I am terminating our lease as of Nov 31, 2002.

As you know I have been enthusiastically rooting for you & your business to be a great success. I am sincerely sorry to have to take this action but as I'm sure you can realize, I have no other choice.

Jim Galvagna

FILED
LANDLORD & TENANT
JUN 16 2003
Superior Court
of the District of Columbia

CONSENT JUDGMENT PRAECIPE **PAGE 2**

James Galvagna
Landlord (Plaintiff)

v. L&T 1982-03

Wagtime, LLC
Tenant (Defendant)

* and execute an acknowledgment of surrender

☐ **The following additional provisions, if any, shall also be made a part of this agreement:**

I. Defendant shall cause all dogs or other animals to be removed from and no longer kept at the Premises no later than midnight 6/22/03

II. Defendant shall vacate the 1st floor and basement at 2104 18th St., NW WDC no later than 6/30/03, deliver all keys to Landlord *

III. In the event Tenant shall fail to vacate by midnight June 30, 2003 Plaintiff shall be entitled to the entry of a money judgment against Tenant in the amount of all unpaid basic monthly rent due under the lease from 7/1/03 forward until possession is restored to landlord plus costs and 20% attorney's fees without waiver of claims or defenses relating to other or further amounts claimed as due under the lease.

IV. Time is of the essence. The parties have had the benefit of legal counsel prior to making this agreement, which is hereby terminated pursuant to this agreement

V. This agreement shall address only Defendant's right to use and occupancy of the leased premises, and does not resolve any other issues concerning Plaintiff's allegations of Defendant's liability pursuant to the lease agreement or defenses thereto. Plaintiff will provide a list of requested actions relating to the condition of the property at point of surrender.

VI. A non-redeemable judgment for possession is hereby entered against Defendant with a stay until June 30, 2003 which entitles the Plaintiff to obtain a writ on or after July 1, 2003 without further notice to Defendant if necessary in order to restore Plaintiff to possession of the premises. The stay is agreed upon as a means to allow Defendant to vacate the premises voluntarily as agreed but to allow the Plaintiff to repossess the Premises immediately should Defendant fail to vacate as agreed to herein.

NOTICE: ALL PAYMENTS, WHETHER TO THE CLERK OF THE SUPERIOR COURT OR TO THE LANDLORD, SHOULD BE MADE PERSONALLY TO INSURE RECEIPT AND MUST BE BY CASH, ** MONEY ORDER OR CERTIFIED CHECK. FAILURE TO MAKE THE PAYMENT AGREED TO MAY RESULT IN YOUR EVICTION.

VII. This consent judgment agreement shall not be construed as an admission by either party of any wrongdoing or liability in connection with the lease agreement, except with regard to the provisions of paragraph 3 above and the termination of the right to possession.

The tenant has read this agreement and/or had the agreement explained, and understands the same, and by his/her signature below acknowledges the terms hereof and receipt of a copy of the agreement.

Wagtime, LLC
Tenant (Defendant)

Thomas Freeman, Esq. Thomas Freeman per Consent
Attorney for Tenant (Defendant)

One Church Street ste 200 Rockville, MD 20850
Address

301-315-0200 461617
Phone Number **Bar Number**

John E. Arness, II

Leibner & Potkin, P.C. John E. Arness II
(Attorney for) Landlord (Plaintiff)

4725 Wisconsin Ave., N.W. #250
Address

202-244-0600 431969
Phone Number **Bar Number**

APPROVED
INTERVIEW & JUDGMENT CLERK

WHITE -- COURT YELLOW -- DEFENDANT PINK -- ATTORNEY

Attachment 15

MILLER, BEAM & PAGANELLI, INC.
CONSULTANTS IN ACOUSTICS, VIBRATION & AUDIOVISUAL SYSTEM DESIGN

January 5, 2004

Mr Erik Wemple
Washington City Paper
2390 Champlain St. NW
Washington, DC 20009

RE: WAG TIME DOG BOARDING FACILITY
Noise Study Results

Dear Mr. Wemple:

Miller, Beam & Paganelli has participated in the measurement of barking dog noise from the Wag Time dog boarding facility (1412 Q St., NW Washington, D.C.) at the neighboring residence. The purpose of the measurements was to document that the noise emanating from the Wag Time facility exceeds the DC maximum allowable noise code levels in a residential zone which is 60 dBA during the daytime and 55 dBA during the nighttime.

An Extech Data logging sound level meter (model #407764) was used to periodically measure noise levels produced from barking dogs. The Extech meter meets ANSI standard for a Type 2 instrument and was calibrated prior to data collection. The meter was set for "fast" time weighting. Most measurements were made using the "A" frequency weighting though some were made using the "C" weighting. The data logger was programmed to measure and store the sound level readings at one second intervals. Measurements periods were typically between 30 seconds and 2 minutes.

Noise measurements were made at two locations: on the second floor rear fire escape and in the middle of the rear yard area (ground level) of the Wemple residence (1414 Q St., NW) adjacent to the Wag Time property. Approximately 70 measurements were made between November 26 and December 22, 2003 at various times of day.

The enclosed figure shows three measurement periods on the same graph. The horizontal axis represents the time in seconds and the vertical axis is the A-weighted sound pressure level (dBA). The top line is a measurement of dogs barking while in the outdoor area behind the Wag Time building. The loudest noise levels reach 90 dBA, while most noise levels are between 80 and 90 dBA . The middle line shows measured noise levels while the dogs were barking from inside the Wag Time facility. Here the loudest barks are 70 dBA with most of barking between 60 and 70 dBA. After about 60 seconds the barking stops. Note that this measurement was made after 10 pm when the noise code is more restrictive. The bottom line is ambient noise without dogs barking but with sirens from emergency vehicles traveling on nearby 14th Street. Maximum levels caused by the sirens were slightly above 60 dBA. Typical background noise levels were about 50 dBA.

Attachment (cont.)

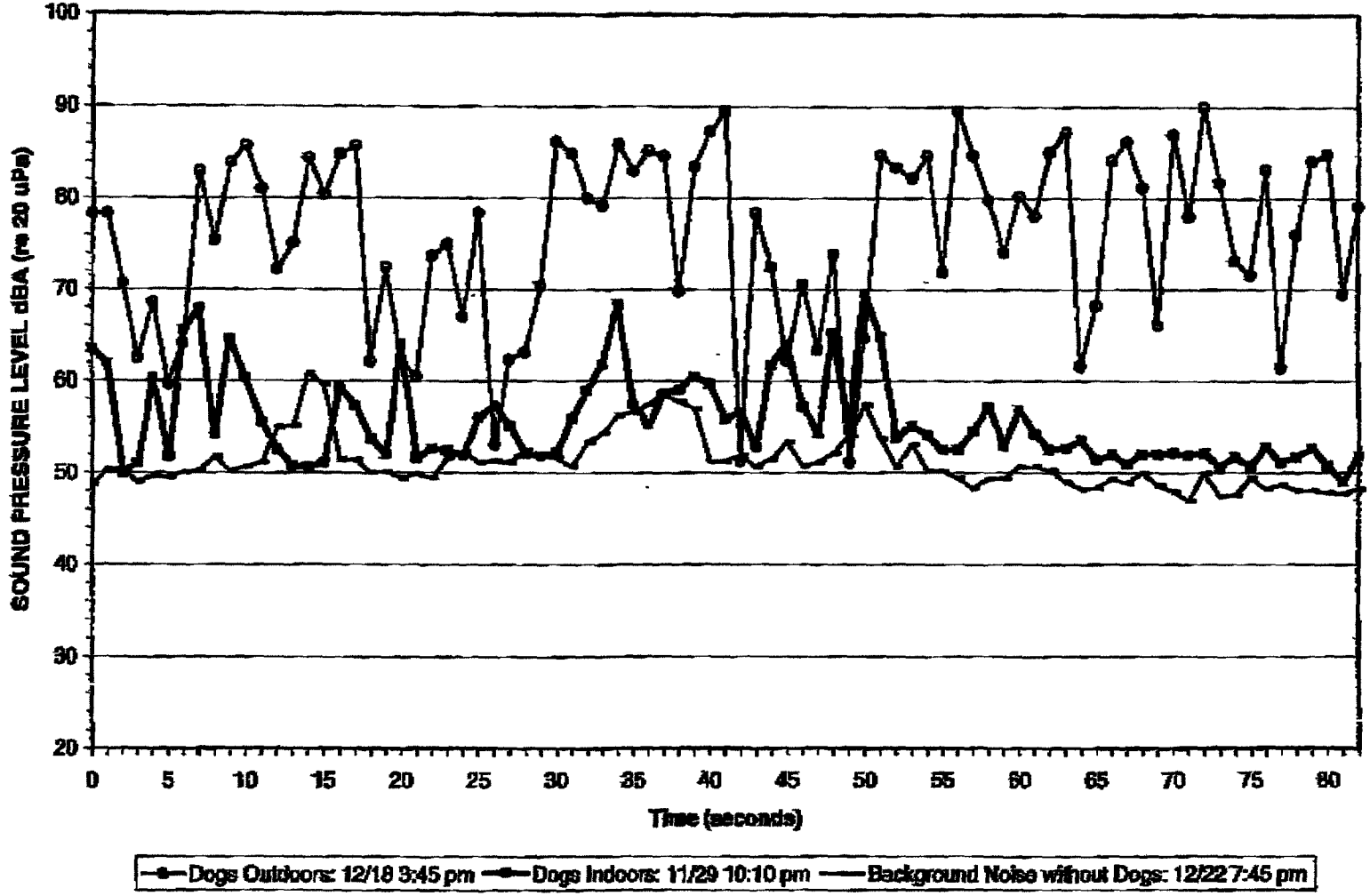
Thus, the noise from the barking dogs clearly exceed the DC noise code levels of 60 dBA during daytime hours and 55 dBA during nighttime hours. Though only two noise profiles are provided here, the many measurements made over nearly a month indicate repeated dog noise levels in excess of the DC noise code. Please call if you have any questions regarding the noise measurements.

Sincerely,

Douglas P. Koehn
Consultant

WAG TIME DOG BOARDING FACILITY

Noise Levels Measured at Neighboring Residence



Miller, Beam & Paganelli, Inc.
McLean, Virginia

Attachment (cont.)

From: Cary Silverman [csilverman@juno.com]
Sent: Tuesday, June 03, 2003 7:18 PM
To: csilverman@anc2f.org
Subject: Wagtime Operations Plan



Wagtime Operation.doc

Attached is a document describing Wagtime's anticipated operations. The document is a compilation of several e-mails that I received from the owner of Wagtime in response to my questions to her. It is not meant as any sort of agreement or to bind Wagtime (or the community) in any way. I have distributed it to the Commissioners in advance of the meeting. I have limited the distribution of this document through this e-mail to only those who have recently contacted me with regard to this issue— but feel free to pass it on to others if you think they would be interested.

Cary

Cary Silverman
Advisory Neighborhood Commissioner for Logan Circle (2F01)
1455 Q Street, N.W., Washington, D.C. 20009
(202) 238-9109 Fax: (202) 783-4211 www.anc2f.org

WAGTIME OPERATION

(The information below was compiled from various e-mails from Wagtime Owner, Lisa Schreiber)

Hours of Operation. Employees working the morning shift arrive at 6:45 a.m. At this time, the employee who stayed over night leaves. The clients start dropping their dogs off at 7 a.m. The majority of the daycare dogs arrive between 7 a.m. and 10a.m, but some additional dogs arrive throughout the day. All dogs will be brought inside by 6 p.m.

Boutique. The front of the facility is a boutique. This area will be swept and mopped as frequently as needed. Dog food will be sold as well as treats and gifts.

Grooming Area. Upstairs is the designated grooming area. This room consists of a new grooming tub and two grooming tables.

Daycare. The third and last (but not least) area is the daycare. This area features a large room inside where there is always water left out, but no food is ever left out for an extended length of time. The floor in the daycare is always kept clean with a pet friendly cleaning solution during the day and a bleach solution after the dogs go home. All dirty water will be disposed of in a mop sink located in the back of the room near the door. The outside area is intended to be an additional area for the dogs to play. Any barking will consistently be monitored and toned down if necessary. Dogs boarding overnight will not be outside. Dogs sleep inside the daycare on beds. Someone is with the dogs at all times.

Trash and Cleanliness. Employees working during the day maintain a clean, friendly, and quiet (as much as possible) environment. All waste will promptly be picked up and disposed of in 55 gal garbage bags. Garbage will be picked up by Fords Hauling service twice a week. The cans will be kept inside the garage door. A water hose is used to wash down the outside. The water is washed down the existing drain in the middle of the area. The front of the building will be kept neat and clean. Wagtime staff will monitor the surrounding area for any dog waste. In addition, Wagtime maintains a clean facility that is frequently monitored for rodents and other pests. An extermination company will be monitoring and treating any unwanted visitors.

Deliveries. Most deliveries are UPS or Fed Ex. No delivery trucks will block the streets.

Number of Dogs. On average, Wagtime anticipates hosting between approximately 25 to 35 dogs on a daily basis. At this early stage, it is difficult to ascertain the number of dogs that will be spending time inside versus outside. As a general matter, Wagtime hosts fewer dogs on the weekends than during the week, with the exception of holidays. Wagtime accepts only friendly, sweet and playful dogs that want a safe area to play with their friends. Wagtime thoroughly screens all tentative applicants prior to admission to the Spa.

Facility. Wagtime's total square footage is approximately 1,500 square feet. The new facility utilizes an existing fence along with a newly constructed canopy and awning. The entranceway will have a three-tier entry system separating the daycare from the street. There will be a buzzer for the enhanced protection of our guests, as well as an alarm and protection system.

Staffing and Training. Wagtime strives to maintain a sufficient ratio of well-trained, experienced staff to dogs in order to protect the safety and well-being of its guests, and moreover to ensure the orderly and peaceful operation of our business within the neighborhood.

Expected Traffic. Wagtime customers and their owners come in all shapes and sizes. Some customers come by foot, while others arrive by car. Whatever fashion our guests arrive, Wagtime will make various efforts to avoid any unnecessary traffic and/or double-parking in front of its store.