

DATE: December 1, 2022

Commission Order No. 24-2022

IN THE MATTER OF
THE APPEAL OF THE
CONDITIONAL USE PERMIT
ISSUED TO NO TIME TO
SPARE, INC. ET AL, BEING
PERMIT NUMBER CUP 22-006

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND DECISION APPROVING
A CONDITIONAL USE PERMIT**

Having held a contested public hearing and having reviewed the transcript and evidence pertaining to the appeal of the approval of the issuance of a Conditional Use Permit for the purposes of operating an Animal Shelter to No Time To Spare Animal Rescue and Sanctuary, a Missouri nonprofit corporation being Charter No. 1319051, Carole Mosele (Risley) and Tony Risley, situated on real property owned by Russell R. Risley and Christie L. Risley, being located and described as 27933 Pendleton Lost Creek Road, Warrenton, Missouri 63383, parcel number 06-270-0-00-015.000.000, the County Commission of Warren County hereby determines and finds the following facts, to wit:

- A. Warren County, through the Warren County Commission, has adopted a Master Plan and a Comprehensive Zoning Order to facilitate the orderly development of Warren County, Missouri.
- B. The Zoning Order provides for certain Zoning Districts and establishes what uses are permitted within each Zoning District, which uses are permitted with a Conditional Use Permit within each Zoning District and a provision that uses not permitted or allowed with a Conditional Use Permit are prohibited.
- C. That the Zoning District applicable to the property subject to the Conditional Use Permit application filed by the above named applicants is Agricultural and also provides that certain uses may be permitted in such district with a Conditional Use Permit. One of the

uses permitted with a Conditional Use Permit is an Animal Shelter. The application for a Conditional Use Permit identifies the following additional uses that are ancillary to the operation of an Animal Shelter: construction and maintenance of kennels and related facilities, fencing, caretaker's home, sheds and other structures permitted in districts classified as Agricultural.

D. The Warren County Zoning Order provides for the ability of the Planning & Zoning Commission to issue Conditional Use Permits for certain uses in certain zoning districts subject to such conditions as the Planning & Zoning Commission deems appropriate, in the Planning & Zoning Commission's sole discretion, so long as such conditions are within the Planning & Zoning Commission's legal authority to impose such conditions to ensure that:

1. The establishment, maintenance, or operation of the Conditional Use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare;
2. The Conditional Use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose already permitted, not substantially diminish and impair property values within the area;
3. The establishment of the Conditional Use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district;
4. Adequate utilities, buffering, access roads, drainage, open spaces, and/or other necessary public services and facilities can and will be economically provided;
5. Adequate measures will be taken to provide ingress and egress so designed as to minimize traffic congestion on the public roads;
6. The Conditional Use shall, in all other respects, conform to the Order and all of the regulations contained therein, including, but not limited to, any specific conditions relating to the proposed Conditional Use and the applicable regulations of the district in which it is located.

E. The Warren County Zoning Order provides for an appeal process which may be utilized by an applicant or an aggrieved party to appeal a decision issued by the Planning & Zoning Commission.

- F. On the 22nd day of July, 2022, the Warren County Planning & Zoning Commission approved the Conditional Use Permit with the conditions as set forth in the Conditional Use Permit letter, a copy being attached hereto as Exhibit A.
- G. On the 28th day of July, 2022, an Appeal of the Planning & Zoning Commission's decision to issue the Conditional Use Permit was filed with the Warren County Clerk by certain aggrieved parties, a copy of such Appeal is attached hereto as Exhibit B. The public hearing required for the Appeal was scheduled for the 29th of August, 2022 at 6:00 PM to be held by the County Commission. Notice of the date, time and location was published and provided in the manner required by Missouri law.
- H. The procedures to be used for the conduct of the hearing were announced and explained prior to the start of the hearing. Evidence and testimony was adduced and exhibits were admitted into the record, all of which are set forth in the Transcript of Hearing, marked Exhibit C and attached hereto. The explanation of the process included notice of the sequence of presenters, how questions and cross examination would be addressed from proponents and opponents and an announcement that no time limit would be placed on any person providing evidence and testimony.
- I. The County Commission received evidence which included, but was not limited to the following:
1. The Planning and Zoning Administrator testified that the Applicants had satisfactorily completed all of the interim conditions imposed by the Planning and Zoning Commission.
 2. The Planning and Zoning Administrator specifically testified that proper action had been taken to prevent waste water and effluent from running onto neighboring property. The Administrator was careful to point out that such actions would not prevent storm water or clean water from following its natural course resulting in some water possibly running onto neighboring property.
 3. Testimony regarding property values was presented by both sides. The Applicant's evidence was presented by real estate professionals familiar with the market whereas the testimony of those in opposition to the permit was limited to evidence presented by property owners.

4. A great deal of testimony regarding the barking of canines in the vicinity of the subject property was presented. The testimony, however, did not distinguish whether the noise was from the kennel or other canines in the area. Warren County does not have a decibel limit for criminal violations and there was also no credible evidence as to the decibel level of the barking at the property lines of the adjoining property. The County Commission specifically finds that an effort was made to introduce evidence of the decibel levels at certain locations but the evidence was not saved or submitted as evidence. In addition, on several occasions, the purported decibel readings were less than what would be considered as a problem.
 5. Numerous people testified that because no other facility of the type under consideration existed in Warren County that it was critical for the health, safety and public welfare to approve the permit.
 6. The records submitted into evidence show that the property upon which the operation is located is owned by someone other than the operator of the facility and that the operator has the permission of the property owner to use the property for the indicated purpose.
 7. The application form was filed in the name of two applicants and a nonprofit corporation but the application also makes reference to the permit being requested for the individuals in "c/o" the nonprofit corporation implying that the real applicant to operate the business is the nonprofit corporation.
- J. The evidence included testimony and exhibits from experts and witnesses knowledgeable about and familiar with, among other things: the operation of the animal rescue industry; the needs of Warren County and its development; wastewater runoff on the site for the proposed use; noise levels applicable to the type of use to be made of the property and property values. Based upon the foregoing, the County Commission specifically finds as follows:
1. The establishment, maintenance, or operation of the Conditional Use, with the conditions to be imposed as part of the permit, will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare, but to the contrary, will provide a substantial public benefit.

2. The Conditional Use will not be injurious to the use and enjoyment of other property in the immediate vicinity for purposes already permitted, will not substantially diminish and impair property values within the area and, based upon testimony of real estate professionals, it is likely that neighboring property will increase in value.
3. The Conditional Use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district. Based upon the un-contradicted testimony of individuals who are familiar with similar facilities in other locations, the proposed use will enhance the orderly development and improvement of surrounding property for uses permitted in the district.
4. The Conditional Use will, in other respects, meet and conform to the County Zoning Order and all of the regulations contained therein, including, but not limited to, any specific conditions relating to the proposed Conditional Use and the applicable regulations of the district in which it is located.

CONCLUSIONS OF LAW

The Warren County Commission bases its decision on the aforementioned facts and the following conclusions of law:

- A. Burden of Proof: The Applicant has the burden of proof to establish that a Conditional Use Permit should be issued. The Warren County Commission finds that the Applicants herein have met their burden of proof and will provide substantial public benefits which outweigh any individual interests which may be adversely affected as testified to at the hearing.
- B. Credibility of witnesses: The question of credibility of witnesses resides in the discretion of the governing body evaluating the evidence. The Warren County Commission determined that the establishment, maintenance or operation of the Conditional Use will meet or exceed the requirements set forth in Section 8.6 of the Zoning Order. The Commission further finds that the testimony of the Applicant's witnesses and those who testified in favor of the project was based on facts and not emotion and although the

testimony of the opponents was sincere, it was in large part based upon emotion. The Warren County Commission finds that the testimony of the Applicant's witnesses to be more credible than those testifying in opposition.

- C. Professional testimony: All of the professional testimony was in favor of approving the permit.
- D. Competent and substantial evidence. It is the conclusion of the Warren County Commission that there was substantial and competent evidence to meet all of the requirements established by the Warren County Zoning Order necessary to support the issuance of a Conditional Use Permit to the Applicant and that the issuance of the Conditional Use Permit is consistent with the Master Plan adopted by Warren County.
- E. Specific issues. Warren County's regulations recognize that it is feasible for an entity to operate a business under a conditional use permit when the land is owned by a different entity.
- F. Although the County Commission can utilize the evidence and findings of the Warren County Planning and Zoning Commission it is not limited to such evidence or findings.

DECISION

Based upon the facts established by the evidence presented at the hearing, and the laws and regulations pertaining thereto, the application of No Time To Spare, Inc., Carol Mosele (Risley) and Tony Risley for a Conditional Use Permit (CUP) to operate an Animal Shelter is approved. The attached Appeal of certain aggrieved parties marked Exhibit B is denied. The CUP is subject to the following conditions:


- A. The permit to operate the business will be personal to No Time To Spare, Inc. except that ability to operate may be transferred to another similar nonprofit entity and the permit authorizing the operation of the facility on the subject premises shall run with land, so far as conducting the business on the current site is concerned, so that ownership of the land may be transferred to any other person or entity without affecting the ability to operate the land on the subject site is concerned.
- B. No more than fifty (50) canines may be maintained on the site at any one time except that the puppies of a canine that is pregnant when received at the site will not be counted until

**Conditional Use Permit
Issued by Warren County
Planning & Zoning**

Permit No: CUP22-006

Issued to: *No Time To Spare*

Animal Shelter
27933 Pendleton Lost Creek Road



Bill Roemer, Planning & Zoning Administrator

12-1-22
Issue Date