

# ANIMALFOLKS

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January 3, 2016

TO: Winona County Board of Commissioners:  
Steve Jacob, Marie Kovecsi, Greg Olson, James Pomeroy, Marcia Ward

cc: Winona County Attorney Karin Sonneman  
Winona County Administrator Kenneth Fritz  
Winona County Zoning Department, Erik Johnson, Zoning Administrator  
Winona County Sheriff Ron Ganrude

**RE; Matter of: Winona County Board of Commissioners, Minnesota – Winona County – Minnesota. January 2016. To be determined: Winona County permission to issue ‘Conditional Use Permit’ to allow large-scale dog breeding facilities.**

Dear Board members:

We respectfully make the following submission to the Winona County Board of Commissioners for their consideration of the permit applications by six large-scale dog breeders to continue their operations within Winona County. Board meeting is set for January 5, 2016.

Animal Folks respectfully requests the Board:

1. Deny all current applications for permits, in accordance with law; And if not:
2. Enact a moratorium and stop further permitting to allow for a good faith study of this issue, pursuant to due process and law, and to allow for changes in the zoning code related to dog kennels reflecting the “general welfare” of the community and concerns of citizens, and
3. If the Board feels the breeders must have some operational legitimacy during the moratorium period, interim use permits could be considered but with strict conditions (i.e., no new expansion or breeding of puppies) and recognition that, per Minn. Stat. sec. 394.303, “any interim use may be terminated by a change in zoning regulations.”

We also strongly recommend that any decisions made be done with the acknowledgement that animals are defined legally as property and property owners may choose to dispose of (kill) animals at any time. In 2008, two kennel operators in Pennsylvania killed nearly 80 dogs in their kennels rather than submit to state-ordered exams. This was not the intent of the government and this type of concern must be expressed so no negative and unexpected consequences occur to the animals.

## **Factors for consideration**

We respectfully submit the following as considerations in your decision process:

- **Tab 1: Size of kennels: Large-scale, mass production**

Minnesota is known for some of the largest dog breeding kennels in the nation. LeRoy Yoder's kennel is included in the top five. Due to "new" kennels being established in Winona County, Winona County is now known as the "puppy mill capitol of Minnesota" (per USDA-licenses).

- **Tab 2: Violation of law**

By operating without a local permit, the six Winona County breeders applying for permits have violated the local zoning ordinance. This violation is a misdemeanor.

- **Tab 3: Burden on the community**

Animal welfare organizations and consumers can suffer financial and emotional harm for the care and treatment of sickly or seized animals. Euthanasia of unwanted animals also creates distress with staff. For the county, the economic impact for a kennel closure is significant.

- **Tab 4: Complaints filed: Suspected Animal Neglect and Cruelty**

Animal Folks filed a complaint against LeRoy Yoder in 2012 for suspected animal cruelty; this breeder has been cited for similar violations in subsequent years. Other complaints, by individuals, were filed in 2007 and 2011.

- **Tab 5: Neighbor Concerns: Noise**

Neighbors have voiced opposition to the kennels due to the barking (high noise levels). Sounds, such as loud barking, can have negative effects on dogs as well as humans. This issue was not fully researched or analyzed by the Planning Commission.

- **Tab 6: Guiding Laws and Principles**

The permitting of "large-scale dog breeding facilities" is more than a land use issue. It can and should be defined as part of the "morals and general welfare" of the community, which the Board has authority to discuss and evaluate. As part of this evaluation:

- An in-depth consideration of animal cruelty concerns so decisions are not arbitrary or capricious (Re Block, 727 N.W.2d 166 (Minn. App. 2007))
- The Five Freedoms for animal welfare
- Each dog defined as a companion animal (not livestock), and treated as such (State of Minnesota vs. Dayna Kristine Bell)

- **Tab 7: Systemic failure by government**

Continued "approvals" by state and federal government for large-scale breeding facilities illustrates a lack of knowledge of proper canine health. Suspected or direct knowledge of animal neglect and cruelty are not reported to law enforcement; violations have not been enforced. An understanding of what constitutes 'health and well-being' must be clarified.

- **Tab 8: Other MN counties: kennel ordinances and conditions**

Other Minnesota counties have amended their kennel ordinances to address the welfare needs of these animals and to protect the county from potential financial, environmental and moral harm. Three themes: limit on number of animals, adherence to local, state and federal law, and incorporation of animal welfare standards and requirements.

- **Tab 9: The science of animal welfare and canine health**

Numerous studies have been conducted on canine health and what is required for proper physical and mental development of dogs and puppies; this includes enrichment and socialization. Of concern: the health of adult breeding dogs and rehabilitation required.

- **Tab 10: Attitudes about companion animals: Societal concerns and changes**

Citizens have voiced opposition to large-scale breeding facilities and the mass production of puppies. Dogs are now considered true family members; the role dogs play within society has changed significantly and how they are bred and cared for must reflect this change.

- **Tab 11: Legislative action: Societal concerns and actions**

In response to concerns, cities, counties and states throughout the nation are enacting laws to prohibit the mass production of puppies and related 'pet trade' activities, including breeder regulation and prohibiting sales of dogs and cats in pet stores. The town of Romulus in New York passed a moratorium banning the building or expansion of large-scale breeding kennels.

- **Tab 12: Request for action**

A moratorium on any permitting of dog breeding kennels in Winona County would allow the Board to effectively study the issue so as to make a fully informed decision. Numerous factors should be reviewed. If permits are granted, the risk of kennels being 'grandfathered in' could hurt future efforts to enforce improved standards of care and other regulatory measures.

In addition to the attached, Animal Folks has further data on Minnesota large-scale breeders showing poor environmental conditions, inadequate managerial practices (due to apparent lack of knowledge of canine health practices), and lack of veterinary care, including photos and video.

Thank you for your willingness to discuss and review this matter.

Animal Folks/Animal Folks MN

Per, Ann Olson,

Founder and Executive Director

651-222-2821 [ann@animalfolks.org](mailto:ann@animalfolks.org)

## **TAB 1: SIZE OF KENNELS: LARGE-SCALE, MASS PRODUCTION**

A key factor in dog breeding is the amount of animals and size of the kennel, which can influence the health and care of each animal and capacity (staffing and skills) required for proper health and care. 'Animal' is also defined not only as the puppies produced and sold, but the breeding females and males confined in the kennels for use in breeding.

Hobby breeders are defined differently from large-scale breeding facilities due to sizing and assumed level of care. The USDA considers a hobby breeder as "a breeder who owns four or under breeding females." Owners (even if they only partially own the animals) with five or more breeding females on one premise need to obtain a USDA license.

While a large-scale breeding business may start with 10, 30 or 50 animals, this type of business may easily expand its 'inventory' over time to increase sales and generate more income. Minnesota does not have the most breeding kennels in the nation, but our state has been and continues to be known for some of the largest kennels. Per USDA inspection reports at time of inspection:

- Clearwater Kennel (owner, Wanda Kretzman) in Morrison County (2015):  
**Total: 1,229** (808 adult dogs/421 puppies)
  
- Valley View Kennel (owner, Paul Haag) in Meeker County (2015):  
**Total: 954** (488 adult dogs/466 puppies)
  
- Menning Enterprises (owner, Ron Menning) in Pipestone County (2014):  
**Total: 802** (513 adult dogs/289 puppies)
  
- Daniel Kuehne in Nobles County (2014):  
**Total: 466** (333 adult dogs/133 puppies)
  
- LeRoy Yoder in Winona County (2014):  
**Total: 303** (170 adult dogs/133 puppies)
  
- Michelle Sonnenberg in Becker County (2014):  
**Total: 231** (225 adult dogs/6 puppies – NOTE: Previous years show over 150+ puppies; puppies could have been sold and shipped immediately prior to the inspection date.)

### **Winona Breeder LeRoy Yoder: Number of dogs and puppies**

Per USDA inspection reports, it is reported that LeRoy Yoder had the following number of dogs and puppies in his kennel at the time of the USDA inspection:

2015, December 1	168 adult dogs/132 puppies	TOTAL: 300
2014, September 4	170 adult dogs/133 puppies	TOTAL: 303
2013, August 28	178 adult dogs/165 puppies	TOTAL: 343
2013, August 8	- responsible adult not available; present at kennel	
2013, April 18	116 adult dogs/62 puppies	TOTAL: 178
2013, April 10	180 adult dogs/113 puppies	TOTAL: 293
2012	- inspection report not available online	
2011, December 5	161 adult dogs/141 puppies	TOTAL: 302
2011, September 15	174 adult dogs/58 puppies	TOTAL: 232
2010, December 28	130 adult dogs/91 puppies	TOTAL: 221
2010, June 17	116 adult dogs/62 puppies	TOTAL: 178
2009, August 11	83 adult dogs/81 puppies	TOTAL: 164
2008, October 30	72 adult dogs/70 puppies	TOTAL: 142
2007, October 24	52 adult dogs/28 puppies	TOTAL: 80

NOTE: Reports prior to 2007 were not available online. Counts may vary considerably based on how many puppies were sold immediately prior to the inspection.

The above counts show a steady increase of the number of animals from 52 adult dogs in 2007 to 168 adult dogs (for breeding) in 2015, with slight variations. This illustrates that breeding kennels, as with other businesses, often expand to increase sales and income. Other “new” breeders, while lower in counts in an initial permit application or licensing, may expand as well.

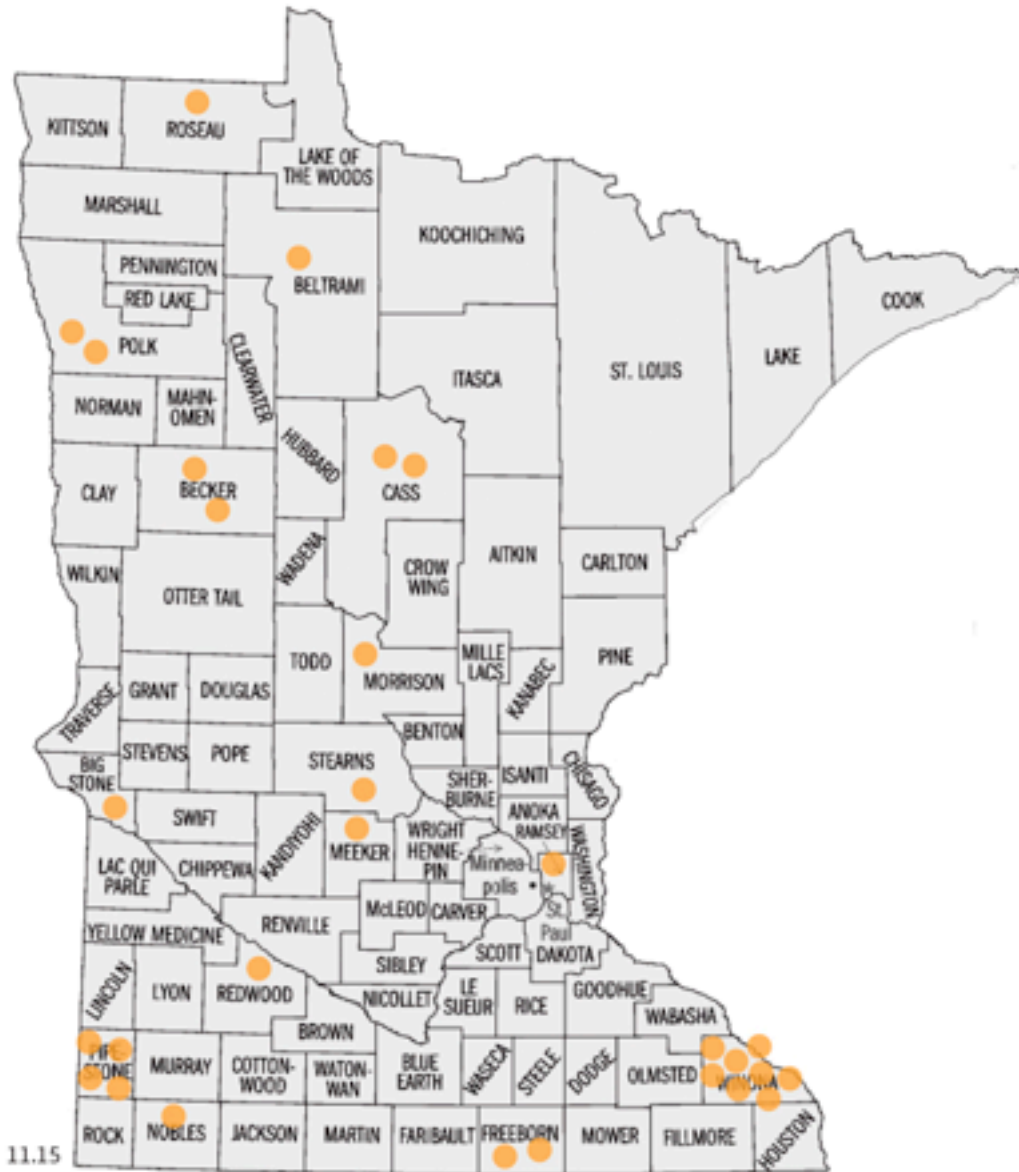
As the ‘product’ produced are sentient beings, this is a key factor for why citizens express concern about “large-scale breeding facilities” — a large volume of dogs and puppies requires significant expense to provide proper veterinary care, enrichment/socialization and other requirements of law.

The Winona County Board may want to consider ‘number of animals’ in its deliberation of this issue as the size of a kennel can directly impact the level of care for an animal, as enclosed documents will explain.

### **Puppy Mill Capital of Minnesota**

Multiple large-scale dog breeders have created “new” kennels in Winona County, confining (collectively) 400+ intact adult dogs for mass production (as cited in the six CUP applications) with potentially thousands of puppies produced if each female is bred repeatedly. The puppies are sold to brokers in Iowa and Missouri for distribution through pet stores nationwide. (In large-scale facilities, multiple breeding adult dogs are confined for 6, 8 or 10 years and bred repeatedly until no longer of use; these dogs are then sold at auction, donated or killed. Prolonged confinement can result in mental and physical distress to these animals.) For examples of interstate sales, see CVIs in Appendix.

Due to the creation of new mass production dog breeding facilities, **Winona County is now known as “the puppy mill capitol” of Minnesota** (as defined by number of USDA-licensed facilities). Dots below show number of USDA-licensed dog or cat breeding kennels (Class A and B) in Minnesota.



11.15

## **TAB 2: VIOLATION OF LAW**

### **Local permits**

The Winona County Zoning Ordinance states that “proposed dwellings on less than forty (40) acres and not meeting the listed exceptions shall require a Conditional Use Permit within the Agricultural / Resources Conservation District.” [10.4.2] Dog kennels are listed as a conditional use:

Chapter 10.4.6 Conditional Uses (14) Dog Kennels

It appears the breeders who have petitioned for permits have already violated the local zoning ordinance by operating without a local permit. This violation is a misdemeanor (Chapter 5.10.1), and anyone in violation “shall be fined not less than \$300 and not more than \$1,000 for each day the violation occurs” (Chapter 5.10.2.(6)). Note this violation states “shall,” not “may;” therefore, at a minimum, fines for only one year for one breeder in violation range from \$109,500 - \$365,000.

As with any business, it is the responsibility of the commercial breeder to be aware of all licensing needed within their community in order to operate a business. It is unclear if these breeding facilities were notified in the past that they required a local permit.

### **State licensing**

Some of the six facilities are also licensed by the State of Minnesota. These breeding facilities should not have received a state license by the Board of Animal Health. Chapter 347.57 - 347.64 (commercial breeders licensing and enforcement) states that:

347.58 Licensing and inspections. Subd. 1. (o) The board must refuse to issue an initial license when a commercial breeder: ... (3) is in violation of a local ordinance regarding breeders; ... (6) has falsified any material information requested by the board.

Winona County has a kennel ordinance and requires a permit to operate; the breeders have been in violation of this ordinance. It appears the MN Board of Animal Health has violated the state law by granting a license to breeders who have violated this subdivision.

### **Federal licensing**

Five of the six breeders applying for a permit are licensed by the USDA. It appears that Menno Bontrager is not licensed by the USDA and may require a federal license if this breeder, as indicated, plans to keep 75 dogs — and chooses to sell the dogs “sight unseen” (per definition in federal Animal Welfare Act). If the breeder has more than 4 breeding females, a federal license is required. Due to lack of access to the breeder’s records (i.e., acquisition and disposition records, interstate sales, inventory counts), it is not possible for us to confirm his actions and intent. It is recommended that the Board explore this matter, to verify that federal law is not currently being violated by this breeder.

### **Additional breeder names**

Animal Folks collects and compiles Certificates of Veterinary Inspections (CVIs) for shipments of puppies

across state lines (interstate commerce). These certificates indicate that, in addition to the six applicants, other breeders located in Winona County are operating:

- **Jake Yoder** — Unable to locate evidence of a USDA license. It appears that no one by this name is licensed by the MN BAH as of 12/21/15 – could possibly be MN licensed under a kennel name.
- **David A. Yoder** — USDA (41-A-0473) licensed. MN BAH licensed under the kennel name, Windy Acres Kennels. CUP granted in 2013.
- **Julie Scharmer** — USDA (41-A0477) licensed. MN BAH licensed. CUP granted in 2013.
- **Dan & Susie Yoder** - Unable to locate evidence of a USDA license. No one by this name is licensed by the MN BAH as of 12/21/15 – could possibly be MN licensed under a kennel name. CUP granted in 2015.

It is recommended that the Board explore all breeders in the county to confirm who is operating and selling dogs as a commercial breeder. For a full list of breeder license numbers and examples of CVIs for each breeder and inspection reports, see Appendix.



### **TAB 3: BURDEN ON THE COMMUNITY**

The lack of knowledge of canine physical and mental health places an enormous burden on other community members who must “clean up the mess” and assume ongoing care for relinquished, rescued or purchased animals.

#### **• Animal shelters, animal rescues, and animal control**

Breeders continue to mass produce puppies and profit from this production, while the local animal shelters, animal rescues and animal control “take in,” care for and medically treat the animals without any financial assistance from the breeders. This is a tremendous financial and staffing burden for these entities; unwanted dogs, too, are euthanized if homes are not found or if medical needs are too severe and costly, which inflicts emotional harm on shelter staff (veterinarians) who have the duty of euthanizing the unwanted or sickly animals.

NOTE: The Winona County Board may want to contact local humane societies, shelters and rescue groups directly to better understand costs incurred by these nonprofits to perform their mission. A rescue of 120+ mill dogs and puppies from a breeder in Pine County cost over \$200,000 for the local Animal Humane Society based in Golden Valley, Minnesota. This included the seizure, transport, medical care and treatment of all animals, and housing for over 3 months due to court complications on the case. An economic impact, prepared by HSUS, describes costs for the handling of “puppy mill” cases from other groups in other states. It is entitled: Puppy Mill Closure — The Economic Impact on a Local Community. (See Appendix.) Costs incurred typically include:

- Transportation — to move animals from the property. Vehicles and fuel are costly.
- Accommodations — multiple animals may require multiple days for set up, seizure and care
- Medical care — includes examination rooms, drugs, medical and surgical supplies, etc.
- Staff time — animals are stressed and expert handlers are needed
- Staffing — can include security, veterinarians, vet techs, other crime scene personnel (i.e., photographers, scribes, animal handlers, drivers), groomers, supply management, personnel for daily care, feeding, cage cleaning, etc.
- Supplies — such as bowls, food, cages, protective gear, leashes, toys, insurance, etc.
- Buildings — temporary and long-term (depending on case and number of animals) with sufficient ventilation, heating or cooling, electricity, parking, etc.

Costs also are incurred long after the removal of the animals; all animals are potential evidence in a cruelty case and chain of custody and other factors must be considered.

Animal shelters understand the high costs of care for animals, and the impact on animals if they stay “too long” in a cage or kennel (which is why well-run shelters try to re-home animals with a 10 day period). In 2010, the Association of Shelter Veterinarians compiled a highly respected manual for use by shelters: Guidelines for Standards of Care in Animal Shelters. At a minimum, similar standards should be applied to the care of dogs and cats in breeding kennels. See Appendix for Shelter Guidelines.

- **Law enforcement and county government**

If suspected animal neglect and cruelty are reported to law enforcement, time and effort is incurred by the police department or sheriff office to investigate each claim. Most law enforcement is not trained in animal forensics, in regards to the health of all species and the details of all types of crimes against animals; most veterinarians are also not trained in forensic veterinary medicine. (See system failure.)

If the investigation finds violation of Minnesota cruelty statutes, such as Chapters 343 and 346, animals must or may be seized. (Chapter 343.12 and Minn. Stat sec. 343.29) Under Minnesota law, the county is responsible for costs related to seizure of animals (with judgment against the person if found guilty):

Minn. Stat. sec 343.23: “The expenses of the investigation authorized by section 343.22, including the fee of the doctor of veterinary medicine, the expenses of keeping or disposing of any animal taken into custody pursuant to an investigation, and all other expenses reasonably incident to the investigation shall be paid by the county treasurer from the general fund of the county. If the person alleged to have violated section 323.21 is found guilty of the violation, the county shall have judgment against the guilty person for the amount of the expenses.”

NOTE: Due to the high costs of animal cruelty cases, some larger animal welfare organizations will financially assist in the seizure, transport, care, treatment and re-homing of animals; however, the county is ultimately, per law, responsible.

- **Consumers**

Consumers too experience financial and emotional harm. Research has shown that consumers may purchase a dog or puppy from a breeder or pet store. If the animal is sickly, the consumer (who has already established a bond with the dog or puppy) may incur high veterinarian bills to an attempt to treat the animal — and/or cannot afford the veterinary care so relinquishes the animal to the local shelter. Some breeders also sell the animal without the proper documentation as specified in the Pet Lemon Law (chapter 325F.79-325F.792) or provide misleading information, which violates the Minnesota consumer protection law (Chapter 325F.69) and may constitute fraud.

The Winona County breeders have stated that they sell their puppies to brokers in Iowa and Missouri, rather than directly to consumers. Animal Folks has the documentation (Certificates of Veterinary Inspection) for these sales and shipments. On each certificate, the broker’s name and location are noted, but it is unclear where the puppies ultimately end up (which pet stores); therefore, it is not possible to document consumer complaints if the puppies are sickly. See Appendix for examples of CVIs.

NOTE: Consumers typically purchase puppies. The Winona County Board may also want to question what happens to the older breeding adult dogs in the breeding kennels after they are no longer of use for breeding and profitability.

#### **TAB 4: COMPLAINTS FILED: SUSPECTED ANIMAL NEGLECT AND CRUELTY**

In March 2012, Animal Folks filed a complaint with the Winona County Sheriff Office against LeRoy Yoder, one of the permit applicants, for suspected animal neglect and cruelty. A copy of the complaint is included in this packet.

Affidavits were provided, with veterinary medical records, from animal rescuers and a groomer who received and treated adult dogs from LeRoy Yoder. Examples of statements:

- “I have been in Rescue for four years. I have taken in many mill pups, but nothing like these three girls. The cruelty and neglect goes beyond anything I have ever witnessed. All three had to be taught how to drink from a bowl of water and eat hard kibble. I don’t know what they were fed in the past; it certainly was not dry dog food. When they tried to eat, the food fell out of their mouths. After a week, they could drink from a bowl of water and did their best with dry dog food. Their teeth were in very poor condition and rotting.”
- “The Bichon was very frightened and hid in the corner of her cage the entire 12 days I had her. She had mats on her paws, her nails were grown into the pads of her front feet, she was full of urine burns and scabs on her back.”
- “The Yorkshire female was matted from head to toe. Her nails were long and she smelled of urine and feces. She was only a year old but was very frightened of human touch and would shutter when I tried to pet her.”
- “The Poodle was the worst of all three. I could not tell what breed she was. Her hair was long and matted 6 inches out from her body. Her coat was orange and yellow from urine and feces. (She is a white Poodle.) The smell was horrific and unspeakable. After her grooming, we noted the urine burns across her back and head.”

A few statements from one of the inspection reports (reported by USDA inspector Brenton Cox on Dec. 5, 2011):

- “Excessively thin animal. The animal had to be physically helped to stand.”
- “USDA Tag number 198. Animal had excessive dental problems, was excessively thin to the touch, and had a black crust in and around the eyes limiting vision.”
- “Black crust covering the eye of a dog. The animal appeared to not be able to open the eye.”
- “Whelping area. The ambient temperature in this area was noted by Kestral 3000 to be 42 [deg]F. Little or no bedding material was in the enclosures. Also noted is the excessive waste material.”
- “Water receptacle which is located well above the animal’s head.”
- “Excessive matting of the face impairing the animals sight.”
- “Animal with no tag that was both visually and physically thin.”

- “Food receptacle with a buildup of hard brown matter in and around the area.”
- “Medication which expired on July 2011.”
- “Matting and excessive nail growth. The tail was noted to be matted to the point the mats had torn the hair.”
- “Buildup of dry and wet brownish material in and around the ears.”

An investigation was conducted. Instead of citing the breeder for violations of Chapter 343 and 346, it appears corrective action was taken (i.e., educate breeder on how to improve facility). Unfortunately, a strong message about animal welfare was not sent with this decision/action; as a result, the breeder has continued to operate and has committed similar acts. See below.

NOTE: The USDA also issued a warning to LeRoy Yoder in 2011. (See Appendix for copy. David Yoder also received a USDA warning; see Appendix.) A warning indicates that the breeder has been notified again (officially) of a noncompliance, and the business is expected to cease from repeating this action.

Multiple USDA inspection reports since 2012 indicate violations by LeRoy Yoder have continued, which illustrates that LeRoy Yoder may have willfully violated the Animal Welfare Act (federal) and/or Minnesota animal anti-cruelty statutes.

- **December 1, 2015** — no noncompliances

- **September 4, 2014** — 4 indirect violations; 1 repeat violation

One example from report: “One adult retriever #194 was noted as having a silver dollar sized protrusion coming out of its back side. This protrusion appeared to have a crusty surface and was discovered because the animal seemed to be uncomfortable when it walked. The animal had neither been assessed by a veterinarian, nor had there been any treatment for the anomaly. Without proper treatment of wounds or infection, animals are at risk of serious infection, injury, and worse.”

- **August 28, 2013** — 3 indirect violations

One example from report: “At least two red plastic food receptacles used in the housing facility enclosures had an accumulation of brown crusty buildup of hair, dust and matter along the outside of the receptacles. ....Used primary enclosures and food and water receptacles for dogs and cats must be sanitized at least once every 2 weeks using one of the methods prescribed in paragraph (b)(3) of this section, and more often if necessary to prevent and accumulation of dirt, debris, food waste, excreta, and other disease hazards.”

- **August 8, 2013** — 1 indirect violation

One example from report: “A responsible person was not available to accompany APHIS Officials during the inspection process.”

- **April 18, 2013** — Focused inspection to address violations from previous inspection.

- **April 10, 2013** — 1 direct violation, 2 indirect violations

One example from report: “One dog #62 Female Shih-Tzu ...had a greenish mucous discharge from the right eye and had corneal scarring. This dog needs to be evaluated again by the

veterinarian to address any eye problems. Eye problems can be very painful and loss of vision can occur if medical intervention is not obtained.”

Example from report: “There was a very strong, overpowering odor throughout the building. Without proper ventilation, animals can become agitated or ill, and the environment can become hazardous for both the animals and employees.”

NOTE: Some of the violations noted above also violated Chapter 343 and Minn. Stat. sec. 346.39. See statutes.

### **Additional complaints filed**

In addition to the complaint filed by Animal Folks in 2012, prior complaints of suspected animal neglect and cruelty against LeRoy Yoder were submitted to the Sheriff’s Office:

- September 27, 2011 – by Shelly Stowell (See Appendix for copy.)
- August 17, 2007 — by Judy Scott (See Appendix for copy.)

The investigation reports do not indicate that a veterinarian (trained in animal cruelty or kennel conditions) was present to medically examine the animals. No detailed report was provided indicating the officers documented details of Chapters 343, 346 and other applicable statutes, or interviewed other individuals at the kennel, employed by the kennel or in the community to verify the complaint.

We do not know if additional complaints have been filed with the Sheriff’s Office after 2012 or prior to 2007. Often citizens do not file complaints for fear of living in the community and not wanting to “report” neighbors.

The Sheriff’s Office recognizes the importance of animal welfare and supports the proper enforcement of law. However, effective enforcement of animal law can be difficult as law enforcement, veterinarians, humane agents, and prosecutors receive little or no training in forensic investigations and prosecution pertaining to animals. Understanding kennel management and animal health, and what constitutes animal neglect, cruelty, pain and suffering in the mass production of dogs will improve as training is developed and provided. (See animal law training materials developed by Animal Folks.)

When assessing past and current kennel conditions, managerial practices and the health of each animal (adult dogs and puppies), the Winona County Board may want to evaluate who is conducting inspections and investigations and what level of training each individual has per state statutes and local ordinances. These investigative/inspection protocols are necessary for any future evaluations as well.

## **TAB 5: NEIGHBOR CONCERNS: NOISE AND NUISANCE**

Neighbors in the area where the kennels are located have opposed the kennels due to the noise created by the barking, among other issues.

Per Winona Post, 12/23/2015, *Protests planned against dog kennels*, Chris Rogers

- “My kids can’t even sleep with their windows open in the summer because of the dogs barking,” reported Casey Mundt, who lives near David J. Yoder’s kennel.
- Living next to a dog kennel can be really loud, said Jamie Burt. She lives next to LeRoy Yoder’s kennel and said that the noise of dogs barking early in the morning regularly disturbs her family. “Every day, day or night, it doesn’t matter what time, you can hear the dogs barking constantly,” she stated.
- Planning Commission members told neighbors who had noise complaints that they should report noise problems to the Winona County Sheriff’s Office. Neighbors said they had not called deputies before, out of respect for their neighbors, but now they would. “There’s going to be a cop called every day and night of the week now,” Mundt said.

As explained by Bob Redig, Planning Commission member, “These noise problems are a legitimate issue that the Planning Commission should consider when granting or denying Conditional Use Permits. It fits within one of the legal criteria for CUPs — whether the proposed use is far enough away from neighboring properties that it will not negatively impact them — and within the county’s duty to consider neighboring property values,” Redig states. “Who is going to buy a house or a farm from somebody in this area if they’ve got a history of barking dogs?”

It appears this issue was not fully researched or analyzed by the Planning Commission.

### **Impact to dogs’ health**

Excessive, constant and loud barking is a result of a large volume of animals in a confined area. This issue not only negatively impacts humans, but also affects dogs. Some breeders may dismiss barking and the noise as part of doing business and claim that “you get used to it,” which does not address the problem to the dogs’ health and well-being.

Patricia McConnell (Adjunct Professor of Zoology at the University of Wisconsin-Madison and expert in animal behavior) states, “Sound is a critically important part of any animal’s environment, and that is especially true of animals who have no choice about the environment in which they live, even if just temporarily....There is every reason to believe that sounds, especially loud, aversive ones, have a negative effect on dogs housed in kennel situations.” See McConnell’s ASPCA webinar on Canine Behavior and Acoustics.

“There is a great deal of research on how sound affects human health and behavior,” explains McConnell (*Canine Behavior and Acoustics in Shelters and Kennels, 9-18-2013*). “The “soundscape” is known to have a profound effect on us, affecting our physiology, psychology, cognition and behavior. It can change our respiration and heart rates, alert our sympathetic (fight or flight) nervous system or calm us down, soothe us or scare us, and in extremity, even cause serious health and behavior problems related to stress like hypertension, tinnitus, difficulty concentrating and mistakes leading to serious accidents. That is why the Occupational Safety and Healthy Administration, OSHA, has standards that dictate how long, per day, an employee can be subjected to high levels of sound. (Small business with under 10 employees, and some other businesses are exempt, see here for a discussion about who is covered under OSHA.) It is not just factories and industrial parks that can create noisy working environments. Two studies have measured sound levels in shelters and found them to be extremely noisy, often exceeding OSHA standards by a significant amount. For example, Coppola et al (2010) recorded sound levels in a new shelter and found them to regularly exceed the measuring capability of the equipment, or 118.9 dBA. Ouch. (Keep in mind that a jack hammer is about 110 dB.) Sales et al (1997) also recorded extremely high levels of sound in a kennel, in which levels were often up to 125dB and regularly over 100dB.

Link to PowerPoint noted above:

[http://www.aspcapro.org/sites/pro/files/aspcapro\\_webinar\\_slides\\_Acoustics.pdf](http://www.aspcapro.org/sites/pro/files/aspcapro_webinar_slides_Acoustics.pdf)

Additional resources for review pertaining to noise and the impact to dogs’ health:

- World Health Organization (WHO)

WHO’s Guidelines for Community Noise (1999) state “that external amenity areas should not be subjected to daytime averaged noise levels greater than 55db LAeq and preferably below 50 dB LAeq. Link to document: <http://www.who.int/docstore/peh/noise/Comnoise-1.pdf>

- Effect of kennel noise on a dog’s hearing:

<http://www.ncbi.nlm.nih.gov/pubmed/22452494>

NOTE: Studies often rely on animal shelter conditions as access to private breeding kennels for purposes of study and animal welfare is rarely allowed.

### **The problem and attempts to address it**

To address this issue, some counties have suggested debarking, which is a highly controversial surgical procedure and opposed to by many within the animal care community.

Per the Humane Society Veterinary Medical Association, devocalization (debarking) creates complications such as infection and the development of “webbing” (scarring), which can lead to difficult breathing and cause chronic coughing or gagging. In addition, a loss of the ability to communicate to other animals and people can result in frustration, resulting in physiological and behavioral issues.

The American Veterinary Medical Association states “barking is a normal canine behavior,” and “reasons for excessive barking may include poor training, boredom, social isolation, response to external stimuli, territorial protection, and behavioral problems, including anxiety, compulsive disorder, and separation anxiety. Devocalization reduces the noise associated with barking, *but not the motivation or behavior.*”

**NOTE:** See *In Re Block*, 727 N.W.2d 166 (Minn. App. 2007). The Morrison County Board of Commissioners chose to grant a Conditional Use Permits (CUP) to a large-scale dog breeder without an in-depth consideration of animal cruelty concerns. The county was sued. The MN Court of Appeals remanded to the County Board to reconsider the CUP application. The Court said the debarking condition was “arbitrary and capricious” because only a cursory analysis was given to cruelty concerns related to debarking.

The issue of noise, the impact to the animals and neighbors, and other ‘mass production’ factors illustrate why any permitting of large-scale breeding facilities should be analyzed fully by the Winona County Board prior to the granting of permits.



## **TAB 6: GUIDING LAWS AND PRINCIPLES**

The use of dogs as “inventory” within a commercial breeding facility for the purpose of generating profit for a business must be weighed against the “health, safety, morals and general welfare” of the community and the state as specified in:

- State of Minnesota: Minn. Stat. sec. 394.21 Authority to carry on county planning and zoning Subd. 1 Except most populous counties. For the purpose of promoting the health, safety, morals, and general welfare of the community any county in the state having less than 300,000 population according to the 1950 federal census is authorized to carry on county planning and zoning activities.
- Winona County Zoning Ordinance: Chapter 2: Intent & Purpose  
Purpose I. Protecting the public health, safety, order, convenience and general welfare.

The language above can be interpreted to guide actions in this matter. “General welfare” is an undefined term in statute; however, the Winona County Board has broad discretion in how it is construed. Per *Sverkerson v. City of Minneapolis* (283 N.W. 555 (Minn.1939)), “The lawmaking body has wide latitude in considering what is an evil and what is necessary for the good order of the community.”

It is our belief that the care and treatment of dogs and puppies within mass production breeding facilities falls within the definition of health, safety, morals, order, convenience and general welfare as noted above. Dogs are now viewed by the majority of Americans as “family members” (see *Societal Changes*) and (see next page) are recognized as pet or companion animals in commercial facilities — not livestock for agricultural production.

### **Opposing viewpoints on the use of dogs**

Considerable data has been compiled about the negative impact of large-scale breeding facilities on the animals, consumers, the county and citizens of the state. This issue has escalated to an ideological discussion of how dogs are used and treated — if income and profit alone (the welfare of the business) takes precedence over the welfare of the animals.

In addition to Winona County, this issue is being debated nationwide as animals produced in one community “end up” in other states for other individuals and organizations to handle.

### **Legal considerations for granting permits**

If the Board chooses to grant Conditional Use Permits (CUPs) without an in-depth consideration of animal cruelty concerns, the CUPs could be invalid. See *In Re Block*, 727 N.W.2d 166 (Minn. App. 2007).

This lawsuit was filed in Morrison County against a breeder, Gary McDuffee, who was granted a permit for a breeding facility with 500 adult dogs. Due to concerns of barking, the County Board of Commissioners required the dogs kept outside be debarked. Debarking is considered by many in

veterinary medicine as surgical mutilation, causing potential health problems to the dogs resulting in pain and suffering to the animal. Citizens and neighbors expressed their concerns about potential cruelty within this large-scale breeding facility; however, the Board choose to act based on their limited knowledge of the health issues. The county was sued. The MN Court of Appeals remanded to the County Board to reconsider the CUP application. The Court said the debarking condition was “arbitrary and capricious” because only a cursory analysis was given to cruelty concerns related to debarking. The Court stated “the county board realized (pursuant to after-acquired materials) that it did not have the benefit of thorough research and documentation when they first discussed the “debarking” issue. ...The fairest result is to remand this matter to the county board to give the Board a chance to reconsider the issuance of a CUP.”

This case is worthy of review by the Winona County Board as it illustrates the complexity of this industry and issue and the varied opinions; making decisions based on input primarily from the breeders, the breeders’ veterinarian (conflict of interest) and inspectors is not representative of all community voices, viewpoints and expertise.

It is an opportunity for any county board to be pro-active in constructing permits that incorporate new data on a particular issue and/or deny permits to reflect the values and concerns of all citizens.

### **The Five Freedoms**

In addition to law, many corporations, animal shelters and governments are now turning to The Five Freedoms to guide their policy-making in regards to animal welfare. Developed in 1965 as a result of a report by the Brambell Commission to address concerns in agriculture settings, these Freedoms are now widely accepted as welfare standards for all animals. They include:

- 1. Freedom from hunger and thirst —**  
by ready access to fresh water and a diet to maintain full health and vigor
- 2. Freedom from discomfort —**  
by providing an appropriate environment including shelter and a comfortable resting areas
- 3. Freedom from pain, injury or disease —**  
by prevention or rapid diagnosis and treatment
- 4. Freedom to express normal behavior —**  
by providing sufficient space, proper facilities and company of the animal’s own kind
- 5. Freedom from fear and distress —**  
by ensuring conditions and treatment which avoid mental suffering

The Winona County Board may want to discuss the standards above during its deliberation.

### **Definition of pet and companion animal**

Another issue influencing the “interpretation of law” is the definition of pet and companion animal versus agricultural use. Minnesota defines a pet or companion animal as:

“Pet” or “companion animal” means a nonhuman mammal, bird, or reptile impounded or held for breeding, or possessed by, cared for, or controlled by a person for the present or future enjoyment of that person or another. [Minn Stat. sec. 346.36 subd. 6]

Some, however, have argued that “breeding kennels” are agricultural entities or defined as family farms. In November 2013, a USDA-licensed commercial breeder (Dayna Bell, Bell Kennels) was convicted by a jury of 13 felony counts of animal cruelty. This case is of importance as it highlights how “breeding dogs” are viewed by these type of kennels, and how they are viewed by the courts. Bell appealed her case, claiming that the breeding dogs in her kennel were, essentially, livestock and not pet or companion animals. (Under Minnesota law, felony penalties only apply to pet and companion animals.) The MN Court of Appeals disagreed. As stated in the Court’s opinion: “In every objective sense, the dogs and puppies that Bell “enjoyed” at her kennel were small-breed, household dogs raised to be and treated as domesticated pets, and Bell sold many of them as pets. Each of these dogs, colloquially referred to as “man’s best friend,” qualifies as a pet or companion animal under the non-exhaustive definition of Minn. Stat. 343.20, subd. 6, which is sufficiently definite such that “ordinary people can understand what conduct is prohibited.” State v. Newstrom, 371 N We.2d 525, 528 (Minn. 1984) (quotation omitted).

The opinion by the Court in regards to the Bell case helps to legally explain what many within society know to be true and have argued for years — that every dog in a breeding kennel, whether a puppy or an adult dog used for breeding, is a pet or companion animal under Minnesota law and must be treated as such. The citizens who have voiced opposition of the Winona County breeders are “ordinary” and reasonable people.

The Court’s decision is unpublished; however, it can still be used as a persuasive argument in other court cases. The details of the opinion should also be understood by all authorities and policy-makers who have jurisdiction over these kennels and where there is any inaccurate interpretation of Minnesota law.

NOTE: This case was appealed to the Minnesota Supreme Court by Bell. The MN Supreme Court refused to hear it. The conviction by the jury and opinion of the Appeals Court stands.

## **TAB 7: SYSTEMIC FAILURE BY GOVERNMENT**

The fact that large-scale dog breeding facilities still remain and are “approved” by government shows a lack of knowledge of proper canine health by authorities and demonstrates a systemic failure by government to protect animals within these type of facilities.

These “approval” actions may also be in direct conflict to Minnesota animal cruelty statutes.

The licensing by government (at federal, state and local levels) for large-scale breeding kennels has created a systemic problem where other officials assume a kennel is in compliance or treating animals properly because the business was given a “stamp of approval” from a designated authority. Often, these authorities have little or no training in canine health, especially as it pertains to mass production facilities. These authorities may have livestock backgrounds and construct protocols based on industry standards for livestock and agricultural pursuits. As quoted in Winona Post, 12/21/2015 and credited to statements made by the MN Board of Animal Health: “The MN Board of Animal Health regulates the treatment and health of livestock and explained that under state law dog kennels are treated similarly to livestock operations.”

NOTE: ‘Treating kennel operations similarly to livestock operations’ was not the intent of the state law regulating commercial dog breeding kennels, nor how animals within the kennels are viewed by the courts (see State of Minnesota vs. Dayna Kristine Bell, 2014).

Until training has been provided for all authorities on how to promote animal welfare and health standards *for canines (and felines)* and how to identify and prevent animal neglect and cruelty with this species, these large-scale facilities will continue to be “approved,” operate and grow — creating burdens on the community.

### **• Federal regulation**

The USDA-APHIS-AC is the designated authority within the federal government to inspect commercial dog breeding facilities who meet the definition of breeder under the Animal Welfare Act. The USDA is required to inspect the breeding facility one day a year; they may return to follow up on violations. “One day a year” does not provide adequate oversight of breeding kennels. The USDA also explains that they only pursue minimal standards. In 2010, the Office of Inspector General (OIG) audited the USDA-APHIS-AC and issued a scathing report of the USDA’s inspection procedures and protocols. (See OIG report.) Numerous recommendations were made for improvements with a key recommendation: to stop educating the breeders and return to enforcement of requirements. This policy was implemented for a short while; the USDA soon returned to “teachable moments” — not citing breeders for violations. The Board must be cautious of relying on the federal government to monitor the breeders.

NOTE: Three Minnesota breeders licensed by the USDA were convicted of animal cruelty: Kathy Bauck, Deborah Rowell and Dayna Bell. (For profile of breeder, details of legal case, inspection reports and photos, go to: [www.animalfolksmn.org](http://www.animalfolksmn.org)) A review of their USDA inspection reports cite some violations

but also report “no noncompliances” — even though kennel conduct was in direct violation of MN animal anti-cruelty statutes.

- **State regulation**

Minnesota was one of the last states in the nation to pass a state law to license and regulate commercial dog and cat breeders (for those states with breeding kennels). In 2014, the Commercial Breeders Licensing and Enforcement law was passed. As news reports have stated (Winona Post, 12/21/2015), citizens assume that “things are going to get better” due to the new state law. Unfortunately, passing a law does not guarantee that the enforcement agency will follow the intent of the law. Recent licensing decisions by the MN Board of Animal Health places into question their abilities to enforce the law properly and protect animals within Minnesota breeding kennels. The Winona County Board of Commissioners should rely on its own judgment, and take the lead.

- **Local regulation**

Some counties have granted permits for commercial kennels to operate; however, often, counties do not have the capacity or ability to follow-through and check that each business is adhering to the imposed conditions and/or to check that businesses requiring a permit are indeed permitted. This is why some counties have limited the size of breeding kennels (i.e., number of total dogs) or denied permits altogether so as to reduce potential risk to the county.

- **Veterinarians**

As with law enforcement, most veterinarians are not trained in forensic investigations. Skills of veterinarians also vary based on species. Many veterinarians throughout Minnesota (and the nation) have chosen not to accept large-scale dog breeders as clients because they do not believe such facilities can provide the proper physical and emotional/behavioral care for each animal. (Adequate staffing to address enrichment and socialization needs for each animal every day is often cost-prohibitive; shelters use volunteers to supplement daily care needs.)

The breeders’ veterinarian Brett Flathers stated in a recent news article (Winona Post 12/23/2015) that “These animals are healthy. Bottom line, they’re healthy.” and “They are probably the most clean animals in the state of Minnesota.” When considering these statements, the Board should raise follow-up questions to clarify what is meant by “healthy” and “clean.” Example: Is each animal examined and treated for:

- Dental disease?
- Skin disease?
- Intestinal disease and parasites?
- Luxating patellas?
- Eye/ear infections?
- Noise levels? (due to barking and other factors so as not to hurt dogs’ hearing)
- Proper exercise? (for muscle development)
- Proper nutrition? (for puppies and pregnant females)
- Proper grooming? (to prevent suffering from excessive matting and overgrown nails)

- Proper ventilation? (for proper breathing; and no strong odors hurting eyes and throats)
- Mental health? — i.e., emotional and behavioral health, not just physical health, contribute to a dog's total well-being. Define enrichment and socialization protocols in place and staffing to meet requirements of law and provide welfare for each animal.

Both federal law (Animal Welfare Act) and state law (MN Commercial Breeders Licensing and Enforcement) require a veterinary protocol be established and followed. In Minnesota, these protocols must include “disease control and prevention, euthanasia, and veterinary care.” The Winona County Board can request a copy of these protocols to better understand what procedures have been discussed and if requirements have been followed.

### **Health and well-being of the animals**

What defines the ‘health and well-being’ of each animal (and who makes this determination) is key in determining the results and outcomes of any regulation.

The World Health Organization defines “health” as:

“A complete state of physical, mental, and social well-being, and not merely the absence of disease or infirmity.”

“Well-being” is defined as (per David Fraser, Research Scientist, Centre for Food and Animal Research)

“The scientific assessment of the well-being of an animal involves finding indicators of three broad criteria:

- 1) a high level of biological functioning;
- 2) freedom from suffering in the sense of prolonged fear, pain, and other negative experiences;
- 3) positive experiences, such as comfort and contentment.”

In some scientific literature, well-being is a component of health while others consider the reverse to be true — that health is a component of well-being. While there are exceptions, both terms — ‘health’ and ‘well-being’ — are most commonly considered to include both physical and mental aspects.

In Minnesota as with other states, there is a spectrum of commercial dog breeding facilities. Some kennel conditions/caging may appear clean and modern while other kennels are dilapidated and decaying. For the untrained eye, a “clean” kennel may appear fine; however, performance standards, not just engineering standards, must be a part of any inspection and animal examination. [AVMA model ordinance] Performance standards focus on the physical and mental welfare of the animal — how the animal is performing, not just the cage size, amount of feces or ventilation. As has been said: “Even if a jail cell is clean, it is still a jail cell.”

An animal confined without the ability to perform his/her natural functions is subjected to a life of mental and emotional suffering which can often be worse than physical harm [McMillan, 2011; see Appendix]. (See The Five Freedoms; also refer to Animal Welfare Policy Statements in Appendix.)

### **Assess capacity of care — who and how much care is given**

The ‘health and well-being’ of each animal is why specific welfare requirements were included within the Minnesota commercial dog and cat breeder law passed in 2014. Example: Chapter 347.59 (b) (4) states: “animals must be provided daily enrichment and must be provided positive physical contact with humane beings and compatible animals at least twice daily unless a veterinarian determines such activities would adversely affect the health or well-being of the animal.” It appears the MN Board of Animal Health has granted licenses to breeders without following this aspect of the law. It is unclear if the veterinary of record is skilled in behavioral health of dogs in large-scale kennels and/or has developed protocols for the breeder to meet all requirements of the state law. If the breeders are not currently adhering to this provision of state law, no permit should be granted.

NOTE: The breeder applications noted that “our children play with the dogs.” While interaction with animals is positive, the Board must qualify these statements to better understand the type and amount of interaction: i.e., How many children? How many animals? How many minutes per day? What type of play? With both the puppies and dogs? Example: If there are 150 adult dogs and 25 puppies in a kennel, just 10 minutes of “play” a day with each animal would equal 1750 minutes or 29.17 hours. This would require 3-4 kids *working full-time (8 hours) a day, every day – without breaks.*

### **Understand and assess provisions within state law**

Other provisions within the state law may not be followed by the Winona County breeders.

The Board will need to consider how requirements are monitored as “adherence to state regulations” is a recommended condition within the permit; or how additional conditions are imposed to promote the health and well-being of each animal. For instance, the state law requires that “animal must not be sold, traded, or given away before the age of eight weeks (347.59 (b) (5)).” Eight weeks is a minimum age requirement; however, other experts argue that puppies are still developing at this age and lose critical learnings from the mother and littermates if pulled from the mother/litter during critical early development months, placed in vans and shipped across state to brokers, and then re-sold and re-shipped to pet stores nationwide. This ‘distribution process’ does not benefit the health of the puppies; and, indeed, creates distress and anxiety for the puppies — which can result in abnormal behaviors. (McMillan, 2013; see Appendix).

## **TAB 8: OTHER MN COUNTIES: KENNEL ORDINANCES AND CONDITIONS**

The fact that the “product” produced with breeding kennels is a sentient being capable of pain and suffering is now being acknowledged by other Minnesota counties.

While zoning ordinances typically focus on land use issues (i.e., signage, traffic, noise), other counties have recognized the potential risks to their communities and harm to animals by large-scale commercial dog breeding facilities. Counties have chosen to amend their kennel ordinance and impose stricter conditions that reflect the changes in society and the new learnings of animal welfare/canine health.

Three examples are highlighted below:

### **1. Sherburne County**

The Sherburne County private and commercial kennel licensing ordinance includes key provisions such as (please note— language below are excerpts only):

- licensee shall at all times remain compliant with all applicable local, state and/or federal laws, rules and/or regulations
- no more more than forty (40) dogs over six (6) months of age may be kept on the private and or commercial property, including no more than ten (10) unsterilized dogs over six (6) months of age.
- Sheriff’s Office and/or Public Health Department shall inspect Commercial Kennels on an annual basis unannounced.
- Any person who violates any provisions of the Ordinance shall be deemed guilty of a misdemeanor and shall be punishable according to State of Minnesota law.

This amended kennel ordinance was done, in part, as a response to a massive dog breeding kennel (Clearwater Kennel) in a neighboring county (Morrison County) that currently has over 1,000 dogs and puppies and in past years has had over 1,700 dogs and puppies. In March 2015, the USDA filed a formal complaint against Clearwater Kennel; the USDA had reason to believe that Clearwater Kennel had willfully violated the Animal Welfare Act and the regulations and standards issued under the Act. Animal Folks too has filed a complaint against this kennel.

### **2. Stearns County**

The Stearns County Land Use and Zoning Ordinance (#439) for commercial kennels (Section 6.31) includes language such as:

- The use shall comply with all applicable Federal, State and County rules and regulations.
- All animals shall be treated humanely at all times.
- All dogs over six (6) months of age shall be exercised daily.
- No animals on the kennel site shall be debarked.
- All kennels shall be subject to periodic inspection by County staff.
- The following standards shall apply to all commercial kennels where breeding of animals is the primary use...No more than forty (40) animals over six (6) months of age may be kept on a



breeding kennel property, including no more than (10) ten unsterilized female animals over six (6) months of age.

### **3.Dodge County**

The Dodge County Zoning Ordinance for commercial kennels (section 16.32.1) includes language such as:

- A Conditional Use Permit is required for any structure or premises meeting the definition of a Kennel that breeds, sells, boards, trains or provides other similar services for domestic animals for profit.
- The use shall comply with all applicable Federal, State and County rules and regulations.
- Kennels for dogs...shall comply with the Minnesota Department of Agriculture's "Best Management Standards for Care of Dogs and Cats by Dealers, Commercial Breeders and Brokers" and Minnesota Statutes 346.39, or successor.
- Commercial kennels exceeding twenty (20) animals over three (3) months of age are prohibited. No kennel shall exceed thirty (30) total animals of any age.

Common themes are found within these amended kennel ordinances:

- limit on number of animals;
- adherence to local, state and federal law;
- incorporation of animal welfare standards and requirements;

It appears common goals guided these actions:

- provide higher care for the animals;
- protect the county from any possible financial liabilities;
- better reflect the health, safety and general welfare of community members, as expressed by a wide range of community viewpoints and opinions.

## **TAB 9: THE SCIENCE OF ANIMAL WELFARE AND CANINE HEALTH**

The science of canine health and what is needed for proper physical and mental development of dogs and puppies has grown and evolved significantly over the past decades.

Smaller, reputable breeders focus on the health of each animal and screen potential buyers. Large-scale facilities operate under a different model. Unfortunately, large-scale breeders may not be educated in the science of proper animal care for dogs and puppies (which is evolving and growing) or may choose to ignore the science and cut corners in animal care to increase profit margins.

In order to better understand the health needs of puppies, adult breeding dogs and elderly dogs, the Board will want to review scientific studies that have been published on this matter. Some of the authors and researchers (veterinarians) may also be willing to speak with board members directly; Animal Folks is able to assist with these arrangements. Examples:

- ***Numerous scientific studies***

Numerous studies have been conducted documenting canine health and what is required for proper well-being and development. Studies also show the critical need for enrichment and socialization with humans and animals for mental health. Animal Folks can provide a comprehensive bibliography.

- ***Scientific Studies of Dogs and Puppies from Commercial Dog Breeding Establishments***

Author: Franklin McMillan, DVM, Director of Well-Being Studies, Best Friends Animal Society

Website: <http://bestfriends.org/resources/scienti%EF%AC%81c-studies-dogs-and-puppies-commercial-dog-breeding-establishments>

Dr. McMillan conducted research of 1,169 former puppy mill dogs from large-scale breeding facilities; study documents harm to the adult dogs kept in confinement/bred repeatedly. Separate study focused on the puppies produced and sold to pet stores. See Appendix for studies.

The term “puppy mill” is often used to describe large-scale commercial dog breeding facilities. Dr. Frank McMillan has defined this term as:

“Any profit-centered breeding facility in which the number of dogs has exceeded the owner’s ability and/or willingness to meet the physical and emotional needs of all of the animals to a degree that permits the animals to have a decent quality of life.”

- ***Rehabilitation Center for Puppy Mill Dogs***

Due to the intensive time and care required for rehabilitation of many adult puppy mill dogs, the ASPCA, in 2013, launched and funded a multi-million-dollar project called the ASPCA Behavioral Rehabilitation Center at St. Hubert’s Animal Welfare Center in Madison, New Jersey. This is the first and only facility dedicated to providing behavioral rehabilitation for fearful, under-socialized dogs, such as those confiscated from puppy mills and hoarding situations. The fact that such a center is required, illustrates the fact that these mass dog production facilities are harmful to animals.

NOTE: In addition to data of physical harm, Animal Folks can provide video and photos showing examples of mental health problems of puppy mill dogs, such as stereotypical behaviors (i.e., dogs running in circles, dog bouncing off of walls/fence, dogs cowering in corners, etc.) due to prolonged confinement. Testifiers, who have cared for and treated these animals, are also available.

- ***Manual of Clinical Behavioral Medicine for Dogs and Cats***

Author: Karen Overall, MA, VMD, PhD, DACVB, CAAB

Published: June 2013

<https://www.elsevier.com/books/manual-of-clinical-behavioral-medicine-for-dogs-and-cats/overall/978-0-323-00890-7>

A guide for veterinarians to help their clients work on resolving pet behavioral issues. Dr. Overall also ran the Behavior Clinic at Penn Vet for more than a dozen years.

- ***Brain Scans Reveal What Dogs Really Think of Us***

Author: Theresa Fisher, Science.Mic

Published: November 2014

<http://mic.com/articles/104474/brain-scans-reveal-what-dogs-really-think-of-us#.HvCFV5YD4>

Almost half of American households have dogs. Scientists have started to study the canine brain – and the studies are proving that dogs are not only devoted to humans, but rely on them for affection and protection. “The scientists found that dog owners' aroma actually sparked activation in the ‘reward center’ of their brains, called the caudate nucleus. Of all the smells to take in, dogs actually prioritized the hint of humans over anything or anyone else.”

- ***Policy statements***

Numerous associations and organizations, such as those listed below, have developed policies about the prevention of animal suffering and the responsibility to properly care for animals. See Appendix.

- American Veterinary Medical Association (AVMA)
- American Animal Hospital Association (AAHA)
- American Prosecutor’s Association (APA)
- National District Attorney’s Association (NDAA)
- American Bar Association (ABA)
- Canadian Veterinary Medical Association (CVMA)

## **TAB 10: ATTITUDES ABOUT COMPANION ANIMALS: SOCIETAL CONCERNS AND CHANGES**

How dogs and puppies are treated is a concern within Winona County, the State of Minnesota and the nation.

Upon hearing of the breeder applications filed, news articles reported that 30+ citizens attended the hearing, over 150+ emails were submitted, and numerous calls were made to the members of the Planning Commission. We assume County Board Commissioners have also been contacted.

How dogs and other companion animals are viewed within society has changed in the past years, which is one more reason why citizens are expressing opposition to businesses that continue to place sales and profit over what is best for the animal. Examples:

### **• *Do We Treat Dogs the Same Way as Children in Our Modern Families?***

Stanley Coren, Ph.D., F.R.S.C., Canine Corner, *Psychology Today*, May 2, 2011.

An online study of 1,000 people by Kelton Research found that “nearly 60% believe that their dogs are currently more important in their lives than were the dogs that they had during their childhood days.”

- 81% consider their dogs to be true family members in equal status to children.
- 54% of Americans consider themselves to be “pet parents,” not “pet owners”
- 77% talk to their pets as if they were family members.
- 75% talk about their pets more than politics, 48% talk about their dog more than their job

Cohen is also author of: ***The Modern Dog: How Dogs Have Changed People and Society and Improved Our Lives (2009)***

### **• *The Changing Status of Animals and Human-Animal Bonds***

Robert K. Anderson, University of Minnesota, Center to Study Human Animal Relationships and Environments (CENSHARE), February 19, 2014 – CENSHARE IS located at the University of Minnesota “Animals and people have been living together for thousands of years, but the past 100 years have been extraordinary in the amount of change in those relationships.” A century ago, people rarely kept their dogs indoors; in modern times, 60-80% of dogs sleep in or on their owner’s bed.

### **• *How Hurricane Katrina Turned Pets into People***

David Grimm, BuzzFeed Contributor, July 31, 2015

Many rescuers refused to take cats and dogs, so “nearly half of the people who stayed behind during Katrina stayed because of their pets.” And many of these people died because they refused to leave their pets behind. An estimated 250,000 animals were left behind, waiting to be rescued.

### **• *How Dogs Can Help Veterans Overcome PTSD: New research finds that “man’s best friend” could be lifesavers for veterans of the wars in Iraq and Afghanistan***

Chris Collin, Smithsonian Magazine, July 2012

“Researchers are accumulating evidence that bonding with dogs has biological effects, such as elevated levels of the hormone oxytocin. ‘Oxytocin improves trust, the ability to interpret facial expressions, the overcoming of paranoia and other pro-social effects—the opposite of PTSD symptoms,’ says Meg Daley Olmert of Baltimore, who works for a program called Warrior Canine Connection.”

- ***10 Reasons Older People Need Pets***

Philip Moeller, U.S. News & World Report, January 7, 2010

Pets can provide companionship that helps combat loneliness, which can lead to depression, and reduce stress. Having a pet also helps seniors establish a routine of getting out and about, which means they’re getting more exercise and interacting with more people. Pets can also provide a sense of security, and having something that relies on you for care is satisfying and can provide a sense of worth.

- ***Pets and health: the impact of companion animals***

Dana Casciotti, Ph.D. and Dian Zuckerman, Ph.D., National Center for Health Research, 2015 (updated)

“The better we understand the human-animal bond, the more we can use it to improve people’s lives.... Some research studies have found that people who have a pet have healthier hearts, stay home sick less often, make fewer visits to the doctor, get more exercise, and are less depressed. Pets may also have a significant impact on allergies, asthma, social support, and social interactions with other people.”

- ***Unlocking the Animal Mind: How Your Pet’s Feelings Hold the Key to His Health and Happiness***

Bob Barker, Dr. Franklin McMillan, Kathryn Lance, 2004

“Veterinarian and animal theorist Dr. Frank McMillan .....presents a comprehensive look at how physical and emotional feelings are at the controls in guiding your animal's actions, from wanting to go for a walk to hiding from the vacuum cleaner to limping on a sore leg. Understanding the importance of your pet's feelings, according the Dr. McMillan, is the key to unlocking the animal mind.” (amazon.com)

The above illustrates just a few examples of why dogs and other companion animals have taken on an increased importance in the lives of Americans, and why these changes should be considered in the morals and general welfare of a community.

## **TAB 11: LEGISLATIVE ACTION: SOCIETAL CONCERNS AND CHANGES**

The treatment of dogs and puppies in large-scale breeding facilities has been documented for years and attempts have been made at local, state and federal levels to raise standards of animal welfare within kennels or to prohibit this antiquated business model.

This 'mass production' mentality has spawned other related businesses that have contributed to animal neglect and cruelty. Cities, counties and states have passed legislation to try and monitor/regulate or stop these practices, and other activities that may create harm to dogs. Examples:

- **Chapter 347.57-347.64 (Commercial Breeders Licensing and Enforcement)**

Passed in 2014, the "Commercial Dog and Cat Breeder Law" licenses and regulates commercial dog and cat breeding facilities in Minnesota that meet the definition of "commercial breeder" ....the intent of the law is to provide protection for dogs, cats, puppies and kittens within these breeding facilities. The MN Board of Animal Health was granted the authority to administer and enforce the law.

Key points of law: Licensing, inspection and enforcement, and imposing penalties. The law requires higher standards of care for animals living in commercial breeding facilities, including proper veterinary care, adequate staffing to care for the animals, required human interaction, and enrichment to promote emotional well-being of the animals.

### **Other states**

Other states and countries have acknowledged that 'mass production breeding kennels' are a problem and have passed legislation to address the issue or to help prevent it from becoming a larger problem. Examples:

- **Moratorium on the establishment or expansion of commercial breeding facilities**

The Town of Romulus passed a moratorium banning the building or expansion of large-scale commercial breeding facilities. "These dog breeding facilities have been known to lead to all sorts of problems with their puppies," David Kaiser, Town of Romulus supervisor, said. "There are two Ag and Market recognized commercial breeding facilities in Romulus but Kaiser said the town has not experienced a problem with either. The intention of the moratorium is to prevent any future problems with facilities sometimes referred to as puppy mills... The town's concern is that puppies from puppy mills tend to exhibit all sorts of behavioral problems and health problems, not only from the breeding stock but from the way they're treated," he said "We don't want Romulus to become the puppy mill capital of New York State." [Ithaca Times, December 30, 2008, Jamie Saine, Romulus Bans Puppy Mills]

- **Banning of sale of animals at swap meets and flea markets**

Pima, Arizona, Houston, Texas and East Baton Rouge, Louisiana each have ordinances banning the sale of animals at swap meets and flea markets. (Pima County, AZ, 6.04.170 Sale of animals at swap meets and public property prohibited — Exceptions — Penalty, and Houston, TX, Sec. 6-118. Roadside and flea market sales)

- **Banning of animals on roadsides and in parking lots**

A Memphis, Tennessee ordinance bans the sale of animals on roadsides and in parking lots. (Sec. 5-15 Roadside sale of animals prohibited)

- **Banning the sales of puppies and kittens in pet stores**

Numerous counties and cities have enacted ordinances prohibiting the sales of puppies and kittens in pet stores. For partial listing, see: <http://www.online-paralegal-programs.com/pet-stores-law/>

- **Processing fee for every dogs/cats not spayed or neutered**

An Austin, Texas ordinance requires pet shops to pay a processing fee for every dog or cat they sell who is not spayed or neutered. (Ordinance No. 20080228-057)

While the Winona County breeders may not sell puppies through swap meets, flea markets or parking lots, the animals are sold through pet stores via brokers. These breeding businesses are part of the “pet trade” industry.

## **TAB 12: REQUEST FOR ACTION**

It is our understanding that Winona County is concerned with the public health, safety, order, convenience and general welfare of its community, as stated in its Zoning Code.

Animal Folks believes that 'welfare' includes not just human beings but other sentient beings who may be vulnerable to the actions of humans. We also assume that the Winona County Board does not support businesses that may establish or promote conditions that could contribute to substandard care of animals and/or animal neglect, cruelty, pain or suffering.

Due to the potential financial risk to the county, the immense scientific data compiled documenting the physical and mental harm dogs and puppies experience within these facilities, the fact that these businesses are already in violation of local law, and other factors and issues outlined in this document, Animal Folks respectfully requests that the Winona County Board of Commissioners:

- 1. Deny all current applications for permits, in accordance with law; And if not:**
- 2. Enact a moratorium and stop further permitting to allow for a good faith study of this issue, pursuant to due process and law, and to allow for changes in the zoning code related to dog kennels reflecting the "general welfare" of the community and concerns of citizens, and**
- 3. If the Board feels the breeders must have some operational legitimacy during the moratorium period, interim use permits could be considered but with:**
  - a. strict conditions — At a minimum, while the moratorium is in effect, one condition should be that the breeders cannot expand their operations or breed new puppies. All federal regulations should also be adhered to; and**
  - b. recognition that, per Minn. Stat. sec. 394.303, "any interim use may be terminated by a change in zoning regulations."**

A moratorium on any permitting of dog breeding kennels within Winona County would allow Board members the time to ascertain the best approach to effectively regulate these type of businesses while providing for the welfare of animals confined in and/or sold from these facilities. The study could include:

- review of current local violations (no permit) and actions to be taken (i.e., charges and fines for years of operation)
- review of other kennel ordinances and conditional use permits in Minnesota counties and/or cities
- review of requirements specified in Minnesota and federal laws pertaining to mass dog breeding, with an understanding that no state license should have been issued to these breeders (due to violation of local ordinance)
- explore compliance with federal laws, not just local and state regulations, as interstate commerce and sales occurs; disease transported across state lines is also a consideration



- review of scientific studies and veterinary medicine pertaining to the health needs of dogs and puppies in mass production kennels, including socialization and enrichment processes
- review of scientific studies pertaining to capacity of care and training (i.e., staffing levels) of staff used within kennels, including definition of best practices
- assessment of environmental concerns, i.e., disposal of feces and bodies, air quality, noise levels and impact to animals and humans
- assessment of health concerns pertaining to humans, i.e., zoonotic disease
- assessment of transportation procedures on health of puppies sold to brokers and/or consumers, and understanding of distribution process between breeder, broker and pet stores
- impact on county for potential cost of care/housing/treatment of animals if animals are seized due to cruelty charges; emergency fund
- impact on animal shelters and rescue groups for care and treatment of unwanted animals; discussion with nonprofits who have cared for Yoder dogs
- review of cruelty complaint filed by Animal Folks in 2012, and subsequent USDA violations by LeRoy Yoders and other breeders
- review of veterinary actions (by breeders' veterinarians and MN Board of Animal Health veterinarians/inspectors); Minnesota-licensed veterinarians are mandated reporters of animal neglect and cruelty
- disenfranchisement of landowners who currently own and operate kennels
- review of "grandfathering in" conditions where breeders who are granted licenses may be defined as nonconforming uses and may be allowed to continue even though they are no longer consistent with the intent of the zoning ordinance
- explore "production" tax or other revenue-capture financial options by breeders to help in the support and care of unwanted animals due to mass production
- review of citizen concerns and opinions pertaining to societal shifts on how dogs and puppies are treated and their value within the community
- review of economic and moral/general welfare value of these type of businesses and its impact to the reputation of Winona County

**CRITICAL:** If actions are taken that result in the closure or downsizing of dog kennels, we ask that considerations be made for the placement of the animals so they are not sold into a continued cycle of breeding and possible neglect or cruelty. As part of this deliberation/study, we also ask that a limit be considered on the size of breeding kennels to minimize the risk to the county and to the animals and to reflect the concerns of its citizens.

Animal Folks is available to assist in the construction of a model ordinance; and can supply scientific data as well as connections to leading veterinarians throughout Minnesota and the United States who are familiar with requirements for proper canine health.

## RESOURCES AND APPENDIX

Winona County breeders, specific data

1. Email submitted to Planning Commission from Animal Folks
2. USDA Warnings: David Yoder and LeRoy Yoder
3. Citizen complaints filed with Winona County Sheriff: 2007 and 2011  
*See separately bound 2012 complaint filed by Animal Folks*
4. Winona County Breeders' licensing and USDA inspection reports with some photos
5. Examples of Certificate of Veterinary Inspection (CVIs) for interstate transport of puppies/dogs

General industry and issue information, applicable

6. MN Stat. sec 347.57-347.64, Commercial Breeders Licensing and Enforcement law  
Scroll to 347.57: <https://www.revisor.mn.gov/statutes/?id=347>  
Supplemental laws: <https://www.bah.state.mn.us/media/cdcb-supplemental-laws.pdf>
7. Franklin D. McMillan, DVM, DACVIM, studies, The Harmful Effects of Puppy Mills on Breeding Dogs and Their Puppies
8. Franklin D. McMillan, Understanding and Caring for Rescued Puppy Mill Dogs, January 2014, Best Friends Animal Society: <http://815678169699-bfas-files.s3-us-west-2.amazonaws.com/Understanding-and-Caring-for-Puppy-Mill-Dogs.pdf>
9. Puppy Mill Closure: The Economic Impact on a Local Community, 2013, HSUS
10. Examples of animal welfare policy statements
11. May 2010 OIG audit of USDA-APHIS-AC and recommendations  
<http://www.usda.gov/oig/webdocs/33002-4-SF.pdf>
12. Guidelines for Standards of Care in Animal Shelters:  
<http://www.sheltervet.org/assets/docs/shelter-standards-oct2011-wforward.pdf>

Enclosed separately:

13. 2012 complaint filed by Animal Folks to Winona County Sheriff
14. Law Enforcement Training Materials: Animal Law and Investigations

### **DESCRIPTION: Animal Folks and Animal Folks MN-Legislative Action**

Based in Minnesota and founded and operated by Minnesotans, Animal Folks has conducted extensive research of large-scale dog breeding facilities in Minnesota, and has submitted complaints of suspected animal cruelty or violation of laws to local, state and federal authorities. Animal Folks worked on the commercial dog and cat breeder law passed in 2014 by the MN State Legislature; and we are familiar with state statutes pertaining to animal cruelty and animal welfare. We have also developed training for law enforcement on issues pertaining to animal cruelty (including mass breeding kennels), and work closely with leading veterinarians throughout the nation on how to identify and report animal cruelty, including physical and behavioral issues of dogs/puppies obtained from these type of facilities. Animal Folks MN – Legislative Action is the legislative arm of Animal Folks.

See [www.animalfolksmn.org](http://www.animalfolksmn.org)