

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

Applicant: Stephanie Poor
13133 Thompson Road
Anacortes, WA 98221

Request/File No: Special Use Permit, PL 11-0177
Variance, PL 11-0391

Location: 13133 Thompson Road, within a portion of the N1/2NW1/4NE1/4
Sec. 9, T34N, R2E, W.M. (Parcel No. 20226)

Land Use Designation: Rural Reserve

Summary of Proposal: Special Use. To operate an overnight boarding/training kennel for dogs (TMS K-9 Connections). The facility includes 14 indoor and outdoor kennels and a 70' x 130' enclosed play yard.
Variance. To allow for the kennels fenced play yard to be within the required 50-foot setback.

SEPA Compliance: Mitigated Determination of Non-Significance (MDNS) dated January 10, 2012, No appeals

Public Hearing: March 7, 2012. Two members of the public testified to concerns. Planning and Development Services (PDS) recommended approval.

Decision/Date: Approval, subject to conditions. April 10, 2012.

Reconsideration/Appeal: A Request for Reconsideration may be filed with PDWS within 10 days of this decision. The decision may be appealed to the Board of County Commissioners by filing an appeal with PDS within 14 days of the date of decision or decision on reconsideration, if applicable.

Online Text: The entire decision can be viewed at:
[www.skagitcounty.net/hearing examiner](http://www.skagitcounty.net/hearing_examiner)

FINDINGS OF FACT

1. Stephanie Poor (applicant) seeks a Special Use Permit and a Variance in order to operate an overnight boarding/training kennel for dogs.
2. The facility, called "TMS K-9 Connections," is located at 13133 Thompson Road in the Summit Park area, within a portion of the N1/2NW1/4NE1/4 Sec. 9, T34N, R2E, W.M. The Parcel Number is 20226. The land use designation is Rural Reserve.
3. The property is situated on the east side of Thompson Road and comprises approximately 2.6 acres lying in an east/west configuration. The parcel is basically rectangular but has a jog along the north property line. The dimensions are: west (front) property line - 220 feet; irregular north (side) property line - 495 feet; east (rear) property line - 260 feet; and south (side) property line - 495 feet.
4. Most of the adjacent properties are of equal or larger size. The adjacent properties are developed except for the property immediately to the north. At the back of the property is a heavily vegetated hill which provides some privacy. The subject site is not located within or adjacent to designated natural resource land. No critical areas have been observed on the property or within 200 feet of the property.
5. There is an existing residence located approximately 350 feet back from Thompson Road. A converted shop building, about 400 feet from Thompson road, is located northeast of the house. The parcel is served by PUD water and an onsite septic system. The Summit Park Fire Station is about 1/4 mile away. An easement road runs parallel to the north property line.
6. The Special Use request is to allow the operation of an overnight boarding/training kennel. The operation is a premium dog boarding and training facility with pickup and delivery service in the greater Seattle area. It is the successor to a facility originally established on Kiket Island and later moved next door to the applicant in the Anacortes area. She worked for the prior kennel operator as a trainer. After his death, his clients sought a trusted replacement facility for their dogs, so the applicant decided to continue to operate the business. The deceased neighbor's operation was carried on next door starting in 2008, without any permits to do so.
7. Since taking over the business, the applicant has also been operating without permits, but seeks by the subject applications to rectify this situation. The facility consists of 12 outdoor kennels (or "runs"), with nine located in the northeast corner of the property between the rock hill and the shop. The other three are located under the deck of the house. The typical kennel is 6' by 8' and contains an extra-large insulated "dogloo" with a cedar shavings pillow. There is a water bucket for each dog. Dogs at the facility range from 15 to 120 pounds, with the majority being small to medium sized.
8. The kennels are made of 12-gage wire with green privacy slats and sturdy doors that are kept latched, except when the dogs enter or exit. The kennels sit on concrete or gravel with 3/4 inch rubbers mats covered with 1/2 inch of shavings. The outdoor runs are covered by a green pitched metal roof to blend with the surroundings.

9. There are 12 indoor runs within the converted shop building for nighttime use by the dogs. The shop is approximately 87 feet from the north (side) property line and 80 feet from east (rear) property line. It has three 2' x 4' windows and one 4' x 4' window, as well as a garage door and a man door.

10. In addition to the kennels, there is a fenced play yard, measuring 130' x 70', located north of the house and shop. This area is also used for training. The play yard is covered with thick grass with a gravel path down the south side. It is surrounded by a 5-foot post and rail fence with 14-gauge 2" x 4" pattern wire. North of the fence is a thick 6-foot tall natural hedge of blackberries and other plants. On the east end of the play yard are planted trees and a thick natural hedge. The south side of the play yard is partially hidden from the residence by tall columnar trees and other landscaping. Screening is needed for the west side of the play area.

11. The play yard is 280 feet from Thompson Road. But, at its closest point, it is six feet from the north property line. This dimension is the subject of the applicant's variance request. The Code requirements for kennels state that "any indoor or outdoor area to be occupied by kennel animals shall be located at least 50 feet from any property line." Moreover a solid wood fence or evergreen vegetative barrier at least six feet high is required between any outdoor kennel use area and a property line.

12. The current configuration of the facility can accommodate 14 dogs at any one time. The business is open from 8 a.m. to 4 p.m. daily. Training occurs Monday through Friday. Private training sessions, an hour in length, are conducted Monday, Thursday and Friday between 10 a.m. and 2 p.m. Training is also provided for boarders. The office for the business is in the basement of the residence. Parking for clients is located on the south side of the property.

13. Each dog has 2+ hours a day outside of their kennels for play, massage or training. Dogs with "like temperaments" are allowed to play in groups of six or less. Occasionally dogs are walked off of the property on leashes. Between the play area and Thompson Road is an open field that is used mostly by the applicant's personal dogs. On rare occasions advanced off-leash obedience training is held there. Aggressive dogs are never allowed to leave the property or to play outside the enclosed play area. The applicant has submitted a plan which details daily exercise for the dogs.

14. Each kennel is spot cleaned daily and stripped of shavings often. Waste goes into contractor-grade garbage bags that are collected in a dumpster that is picked up by Waste Management weekly. When fresh shavings are put in, runs are sprayed with Nature's Miracle to clean and to kill odor. The runs are also cleaned with Nature's Miracle when the shavings are stripped. Dogs are bathed after they have stayed a week. The bathing area is located by the garage parking slab by the house. Runoff from bathing infiltrates into the lawn and landscaping.

15. The property is currently landscaped with a variety of evergreen and deciduous trees and shrubs, as well as undisturbed natural vegetation. A plan has been submitted to show existing landscaping. Additional landscaping is proposed for the west side of the play yard. The applicant plans to put in a row of columnar evergreen trees there. The Staff has noted that if

the open field area adjacent to Thompson road is to be used for kennel activities on a regular basis, it too will need a landscaping screen.

16. The applicant has provided a detailed emergency evacuation plan. In case of an emergency, each dog would be led by leash from the building or run area and taken to the enclosed play area where they would be leashed to the wire fencing at a safe distance from any buildings and from each other.

17. The Special Use application was deemed complete on July 12, 2011. On July 21, 2011, a Notice of Development Application was posted on the property, published and mailed to nearby owners, as required by law. Three letters in opposition were received. The main issue raised was noise generated by dogs. The Variance application was deemed complete on December 9, 2011 and was given proper notice on December 22, 2011. No comments were received on the variance request. Proper notice was given of the public hearing. At the hearing two members of the public expressed concerns over barking dogs.

18. The application was reviewed under the State Environmental Policy Act (SEPA). As a result, a Mitigated Determination of Non-Significance (MDNS) was issued on January 10, 2012. The MDNS was not appealed. No comments were received. The conditions imposed were:

- (1) Solid waste shall be at a minimum double bagged and placed in metal receptacles on premise to be disposed of on a weekly schedule either picked up by Waste Management, Inc., another solid waste handler, or taken to a solid waste transfer.
- (2) The bagged waste shall weigh no more than 10 pounds each.
- (3) The receptacle(s) shall be covered and insect and rodent proofed.
- (4) As a alternative, an approved agriculture waste plan or an approved onsite septic system used exclusively for the containment of the animal waste may be used. The septic system must be monitored and maintained at a maximum of every six (6) months.
- (5) Temporary erosion/sedimentation control measures, as approved by the Skagit County Department of Public Works shall be in place prior to the placement of any fill material. The applicant shall maintain all temporary erosion/sedimentation control measures in accordance with the Skagit County Drainage/Erosion/Sedimentation Control Ordinance. Said measures shall remain in place until completion of the project.
- (6) The applicant shall comply with SCC 14.16.840 Performance Standards.

19. The Special Use application was routed to the various County departments for review. Their comments are reflected in conditions of approval.

20. On balance, the record does not support attributing excessive noise problems to the kennel operation. The concerns expressed are principally about noise in the evening and at night. The kennel dogs are kept inside during evening and night hours in an enclosed shop building that effectively muffles any barking that may occur inside. Generally the kennel dogs

are put inside in the late afternoon and not let outside until after 8 a.m. in the morning. The applicant noted that she is not bothered by night noise from the shop even though her bedroom is about 50 feet away. The closest neighboring house is about 230 feet away.

21. Ownership of dogs is common in the neighborhood. Sometimes there is barking at night, but the question of whose dog starts it is a subject of mutual finger pointing. The applicants do have a pet dog of their own which is sometimes noisy and has at times been known to bark in the evening or early morning. Any problem this dog may have caused does not appear to be attributable to the kennel operation. Further, this family pet was not shown to have triggered problem barking in the enclosed shop.

22. The applicant's predecessor operated his boarding/training kennel next door for about a year. There is nothing in the record indicating that his operation triggered complaints about excessive barking noise.

23. The general criteria for Special Use Permit approvals include compliance with existing Comprehensive Plan and County Code provisions, the avoidance of adverse health and safety effects, and the avoidance of "undue" pollution, including noise creation. See SCC 14.16.900(1)(b)(v). In addition, there are specific criteria for kennels. See SCC 14.16.900(2)(i). The Staff Report analyses the instant application in light of all these criteria, and determines that, except for the location of the play yard, the applicant's described boarding/training kennel, as conditioned, meets the relevant standards for approval. The Staff Report is by this reference incorporated herein as though fully set forth. The Hearing Examiner concurs with the Staff analysis and hereby adopts the same.

24. The criteria for approval of Variances are set forth at SCC 14.10.030(2). In general entitlement to a Variance depends on special circumstances which are peculiar to the property in question. Again the Staff analysis supports a conclusion that the Variance criteria are met by the proposal, as conditioned. Again, the Examiner concurs with the Staff analysis and adopts the same.

25. The subject play yard is in a corner of the property where its impact is least likely to result in any adverse impact on neighbors. The prior development of the property has resulted in the placement of improvements which would be interfered with significantly by having to adhere to a 50-foot setback for the play yard and its fencing. Relocation of the play yard would present greater risk of adverse effects on neighboring properties.

26. The Examiner finds that the reason set forth in the application justify the granting of the setback variance. The variance is the minimum that will make possible reasonable use of the subject property. The granting of the variance will be in harmony with the general purpose and intent of the Unified Development Code and the County Code in general. It will not be injurious to the neighborhood or otherwise detrimental to public welfare.

27. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the subject matter of this proceeding. SCC 14.16.320(4)(n)(i), SCC 14.10.020(3).
2. The requirements of SEPA have been met.
3. The location of the play yard and related fencing, meet the requirements of Chapter 14.10 SCC for the granting of Variances.
4. With the approval of the Variance, the overnight boarding/training kennel, as conditioned, meets the special requirements for the approval of kennels under SCC 14.16.900(2)(i). The proposal is well-within the relevant limits for the number of animals kept on site. The appropriate provisions for the health and safety of the animals have been made.
5. The overnight boarding/training kennel, as conditioned, meets the general requirements for the approval of Special Uses. SCC 14.16.900(1)(b)(v).
6. Any finding herein which may be deemed a conclusion is hereby adopted as such.

CONDITIONS

1. The project shall conform to the description given in the application materials, except as the same may be modified by these conditions.
2. Any construction for the purpose of creating kennel space shall require a building permit. The applicant shall obtain all required permits and shall abide by the conditions of same.
3. The applicant shall comply with the conditions of the MDNS (See Finding 18 above).
4. The applicant shall comply with relevant requirements of the Skagit County Code, including but not limited to, Chapter 7.02 SCC (kennels), SCC 14.16.900(2)(i) (kennels), SCC 14.16.840 (noise, adverse environmental impacts).
5. The applicant shall comply with relevant State regulations, including but not limited to, Chapters 173-200 and 210A (surface and ground water quality, Chapter 173-60 (noise standards).
6. The applicant shall insure that the onsite septic system and reserve area are protected from damage from soil compaction. The septic system shall be inspected annually. (See WAC 246-272A-0270(1).)
7. Within 90 days from the date of this decision, the applicant shall comply with requirements for the installation of non-removable backflow prevention devices. A copy of the PUD's written confirmation of completion shall be submitted to PDS.

8. The planting of columnar evergreen trees along the west side of the play yard (as shown on the December 5, 2011 landscaping plan) shall be completed or bonded for within 60 days of the date of this decision. (See SCC 14.16.830(6)(g)). If bonded, the landscaping shall be planted within 9 months of the date of this decision.

9. The kennel operation shall be limited to no more than 14 dogs on the premises at one time.

10. The reduction in setback shall apply only to the north side of the existing play yard. The existing fence may remain, provided that the existing natural plantings between the fence and the property line are retained and maintained.

11. Within 30 days after any change in ownership of the parcel PDS shall be notified of such change by letter referencing the permit number (PL11-0177).

12. The applicant shall comply with the annual certification process, acknowledging in writing compliance with the original permit approval, including any conditions. (See SCC 14.16.900(3)).

13. All planning related fees, including recording of the decision, shall be paid within 30 days of receipt of the invoice.

14. If the operation ceases for a period one year, the permit shall be void.

15. The permit may be rescinded if the applicant has been convicted of animal cruelty, as defined in Chapter 16.52 RCW.

16. The permit may be rescinded if the kennel is found to be in violation of any provision of Chapter 7.02 SCC.

17. The permit may be rescinded for failure to comply with any condition thereof.

DECISION

The requested Special Use Permit (PL11-0177) and the requested Variance (PL11-0391) are approved, subject to the conditions set forth above.

DONE, this 10st day of April 2012.



Wick Dufford, Hearing Examiner

Transmitted to Applicant and parties of record on April 10, 2012.
See Notice of Decision, Page 1, for Reconsideration and Appeal information.