

NOTICE OF DECISION

BEFORE THE HEARING EXAMINER FOR SKAGIT COUNTY

Applicant: Carol Lemelson
25954 Lake Cavanaugh Road
Mount Vernon, WA 98274

Request: Special Use Permit, PL19-0570

Location: 25954 Lake Cavanaugh Road, within a portion of NW1/4
Sec. 17, T33N, R5E, W,M. Parcel Nos. P101336, 18103.

Zoning: Secondary Forest Natural Resource Lands (SF-NRL)

Summary of Proposal: Operation of a “Limited Kennel” dog breeding business.

Public Hearing: October 27, 2021. Testimony by Planning and Development
Services (PDS). Applicant, and Applicant’s Counsel. Two
members of the public spoke in favor of the project.

Decision/Date: The application is approved, subject to conditions. November 8,
2021.

Reconsideration/Appeal: Reconsideration may be requested by filing with PDS within 10
days of this decision. Appeal is to the Board of County
Commissioners by filing with PDS within 14 days of this decision,
or decision on reconsideration if applicable.

Online Text: The entire decision can be viewed at:
www.skagitcounty.net/hearingexaminer

FINDINGS OF FACT

1. Carolyn Lemelson seeks a Special Use Permit to operate a “limited kennel” dog breeding business.
2. A limited kennel is defined as “any premises at which 1 or more dogs, cats, or both are kept overnight for a commercial purpose including but not limited to breeding or selling.”
3. The site is at 25954 Lake Cavanaugh Road, within a portion of NW1/4 Sec. 17, T33N, R5E, WM.
4. The site consists of two contiguous parcels. Parcel P101336 is two acres in size and contains a single-family residence. Parcel P18103 comprises 21.70 acres and contains an accessory shop building. The kennel operations are contained within the existing buildings and their immediate surroundings.
5. The kennel is operated by the residents of the site. There are no outside employees.
6. The property is surrounded by land zoned Secondary Forest-Natural Resource Land which is principally devoted to forestry use. Neighboring owners keep animals, such as dogs, cats, pigs, horses, cows, chickens and goats. Home-based businesses are also run from nearby homes.
7. Animal enclosures on the site are six feet high. There is a multiple door entry and exit system. The waste management system includes floor drains and a collection tank. Outdoor animal waste is collected and disposed of daily. The indoor and outdoor areas occupied by the kennel are 50 feet away from all property lines. A preexisting vegetative barrier is present.
8. Animals will be contained in an enclosed building between the hours of 9:00 p.m. and 8:00 a.m. daily.
9. Following a pre-development meeting with Staff, the permit application was filed on September 24, 2019. Additional information was requested. After review of a re-submittal, the application was deemed complete on October 22, 2020. A Notice of Development Application was published on October 29, 2020. Another request of additional information dated August 20, 2021, was responded to by the applicant on August 23, 2021.
10. Three letters were received from members of the public. One complained of the noise made by barking dogs and cited anxiety, fatigue and depression as effects. Two raised questions about the health of the dogs being sold, alleging that buyers have received sick dogs.
11. The Applicant responded by promising to make necessary improvements to comply with noise rules, and by rebutting in detail the claims that sick dogs are being sold.

12. Environmental review under the State Environmental Policy Act (SEPA) resulted in issuance of a Declaration of Non-Significance (DNS) on November 19, 2020. There were no appeals.

13. Critical areas review on a small portion of the site was completed with BP01-0028. Operations under the current proposal will not impinge upon any critical areas or buffers.

14. The Hearing Examiner's hearing was held on October 27, 2021. Applicant's counsel questioned the legitimacy of the condition calling on the Applicant to grant entry to County officials for compliance inspections. The County responded that SCC 7.02.080 grants a right of entry. Two members of the public testified in support of the application.

15. The application was circulated to interested County departments. Their comments are reflected in conditions of approval.

16. The Staff evaluated the application in light of the general Special Use Permit criteria and the specific criteria for kennels, and concluded that, as conditioned, the proposal meets the criteria. The Staff Report is by this reference incorporated herein as though fully set forth.

17. The Staff Report does not deal with the problems raised in correspondence: barking and health of dogs sold. The Examiner finds that pre-conditions addressing these issues must be satisfied before approval of this application can become effective.

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

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over this proceeding. SCC14.16.900(1)(b)(iii).

2. The requirements of SEPA have been met.

3. The Examiner does not have authority to evaluate the validity of County ordinances. Therefore, the right of entry for inspection granted by SCC 7.02.080 must be accepted, unless and until overturned.

4. The issues of barking dogs and of the health of dogs are to be dealt with through compliance with the two pre-conditions set forth below.

5. Upon compliance with the pre-conditions, the subject application will meet the general requirements for issuance of a Special Use permit, SCC 14.16.900(1)(b)(v), as well as the specific criteria for kennels, SCC 14.16.900(2)(i), subject to compliance with the conditions of operation.

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

PRE-CONDITIONS

The Special Use Permit shall not become effective until the following pre-conditions are met:

1. The applicant shall explore practical methods to reduce the impact of barking dogs on nearby properties and shall furnish the results of their search to PDS. Additional conditions on this subject may be added to the permit.
2. The Special Use Permit shall not become effective until a health inspection of the premises and of the animals to be sold is conducted by a qualified professional selected by the County and until such professional has certified that the animals then available for purchase are healthy and that site conditions are conducive to the good health of the animals kept there.

CONDITIONS OF OPERATION

Operations under the issued permit shall be subject to the following conditions:

1. The operation of the kennel shall be as described in the applications materials, except as the same may be modified by these conditions.
2. A Commercial Access Permit shall be required to access the proposed kennel site from Lake Cavanaugh Road. The driveway must meet Skagit County Road Standards.
3. No water associated with the limited kennel may come from the existing residence's well. Unless or until an alternative source dug well is approved, water for the kennel shall be trucked in on an as-needed basis.
4. The applicant shall obtain a Water Permit from PDS in order to operate a Limited Kennel. If at a future date the applicant proposes to have employees on site, further water review will be required.
5. The applicant shall obtain any other required permits and shall abide by the conditions of same.
6. The applicant shall contact the Skagit County Assessor's Office and take such actions regarding the property as that office may require.
7. Every effort shall be made to operate the kennel in a manner that reduces the barking of dogs to a minimum. The applicant shall comply with any requirements concerning the control of barking the County may impose.

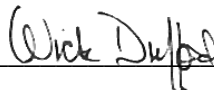
8. The applicant shall comply with SCC 14.16.900(2)(i) (kennels generally):
 - A. Areas used as part of a dog kennel operation shall be composed of at least 1 acre for every 5 dogs (i.e. 2.5 acres of kennel area would be required for 25 dogs)
 - B. Any indoor or outdoor area to be occupied by kennel animals shall be located at least 50 feet from any property line. A solid-wood fence or continuous non-deciduous vegetative barrier shall be required, each at least 6 feet in height, between any outdoor kennel use area and the subject property lines. Fences and continuous barriers will not be required in cases where kennel use areas are at least 500 feet from all subject property lines.
 - C. Parking for all kennel customers and employees shall be fully contained on the subject property and shall not include the use of any road right-of-way.
 - D. All lighting shall be directed away from neighboring residences or businesses.
 - E. An approved waste disposal plan that complies with Chapter 12.16 SCC shall be required.
 - F. Kennel animals must be contained on the subject property. Outdoor kennel areas shall be constructed with adequate materials and height so as to prevent animal escapement.
 - G. Any outdoor kennel use areas shall be configured such that impacts to surrounding properties are minimized. All animals must be contained in enclosed buildings between the hours of 9:00 p.m. and 8:00 a.m. daily.
9. The applicant shall comply with SCC 14.16.900(2)(ix) (limited kennels):
 - A. Limited kennels shall not exceed 25 dogs or cats over 16 weeks of age on site at any one time.
 - B. At no time shall there be more than 50 dogs or cats of any age on site.
 - C. No dogs or cats shall be commercially boarded at a limited kennel.
 - D. A limited kennel may have animals kept during daytime and overnight hours and may also include additional related services including but not limited to selling, training, grooming, and daily care.
10. The applicant shall comply with all applicable State and County regulations, including but not limited to, Chapter 173-60 WAC (noise); Chapters 173-200 and 201 WAC (surface and ground water quality), SCC 14.16.840 (performance standards), Chapter 7.02 SCC (kennels), Chapter 14.32 SCC (stormwater).
11. Sewage shall be disposed of in an approved fashion. Dog waste or by-products shall not go into the sewage waste stream.
12. Dog waste shall be double bagged and disposed of as approved by Waste Management Northwest.
13. Fire extinguishers shall be installed, meeting 2018 International Fire Code, Section 906.1 Standards. The Fire Marshal's Office shall be contacted for required inspections.

14. The applicant shall provide all property owners within 300 feet of the subject property a 24-hour contact phone number where neighboring property owner can call to report noise/barking complaints associated with the kennel.
15. Per SCC 14.16.900(1)(d) this permit shall be void if the use permitted has not been established within two years of permit approval.
16. PDS shall be notified of any change of ownership within 30 days of the change.
17. The permit shall be void if the use is abandoned for more than one year.
18. Failure to comply with any permit condition may result in permit revocation. SCC 14.16.900(1)(b)(iii).

ORDER

The requested Special Use Permit (19-0570) is approved upon compliance with the Pre-Conditions set forth above. The approval is subject to the Conditions of Operation set forth above.

SO ORDERED, this 8 day of November, 2020.



Wick Dufford, Hearing Examiner

Transmitted to Applicant, County staff, and interested parties on November 8 , 2021.