

NOTICE OF REVISED 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: 2594 Lake Cavanaugh Road, within a portion of NW1/4
Sec. 17, T33N, R5E, W.M. Parcel Nos. P101336, 18103.

Zoning: Secondary Forest Natural Resources 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.

Initial Decision: Approved subject to conditions, Nov. 8, 2021

Reconsideration: Both the Applicant and the County sought reconsideration. The revised decision addresses the concerns raised.

Revised Decision: Approved with removal of the Pre-Conditions and elimination of Conclusions #3 and #4. Conclusions #5 and #6 have been renumbered as #3 and #4. Conclusion #3 has been slightly revised. The Conditions of Operation remain as before.

Appeal: Appeal is to the Board of County Commissioners by filing with PDS within 14 days if this decision on reconsideration.

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

DISCUSSION ON RECONSIDERATION

The Applicant, through her attorney, timely requested Reconsideration on November 18, 2021. The County sought Reconsideration on the same date. Both requests were concerned with the two Preconditions set forth in the Examiner's decision on November 8, 2021.

The information provided in the Reconsideration submission of the Applicant sufficiently satisfies the Examiner's concerns regarding barking and health. Therefore, the Examiner is hereby revising the decision to eliminate the preconditions.

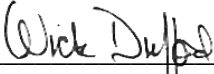
The matter of entry for inspection is dealt with by eliminating original Conclusion of Law #3. The Examiner had no intention of making law, but simply meant to note that the County may inspect pursuant to whatever SCC 7.02.080 may allow. The term "right of entry" was ill-advised.

Adjustments have been made to the findings to reflect the above.

The Examiner hereby adds the USDA Inspection Report, dated October 15, 2021 to the record, as Exhibit 11.

Because of the nature of the resolution outlined here, the County's concerns about conducting an acoustical evaluation are moot.

DATED. this 24th, day of November, 2021.



Wick Dufford, Hearing Examiner

REVISED DECISION

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 NW1/2 Sec. 17, T33N, R5E, W.M.

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, 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 for 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 as conditions of approval.

16. The Staff evaluated the application in light of the general Special Use Permit criteria and the specific criteria for kennels. They 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 did not deal with the problem of barking and with the health of dogs sold. These matters were addressed in response to applicant's Request for Reconsideration.

18. The applicant advised that substantial steps have been taken to ensure noise reduction, including planting a row of trees and shrubbery and installing sound reduction panels in fencing.

19. An environmental noise assessment concluded that on the neighbor's property, the received sounds from the kennel are well within the range of the noise limits provided by Skagit County Code and state law.

20. On October 13, 2021, the premises were inspected by a USDA Veterinary Medical Officer who produced an official report. The report stated that no non-compliant items were found in the inspection. The inspection report has been added to the record as an exhibit.

21. In addition, the applicant noted that her veterinarian regularly does a check-up of all the dogs. The next one is scheduled for March 2022.

22. In light of the material presented on Reconsideration, the Examiner finds that the applicant has adequately addressed the issues of concern and that facilities and operations meet applicable noise and health requirements.

23. 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 subject application meets the requirements for issuance of a Special Use Permit. SCC 14.16.900(1)(b)(v), and the specific criteria for kennels, SCC 14.16.900(2)(i), subject to compliance with the Conditions of Operation set forth below.
4. Any finding herein which may be deemed a conclusion is hereby adopted as such.

CONDITIONS

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

1. The operation of the kennel shall be as described in the application 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 meets Skagit Count Road Standards.
3. No water associated with the limited kennel may come from the existing residence's well. Unless of 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.
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., 5 acres of kennel area would be required for 25 dogs).
 - B. Any indoor 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.

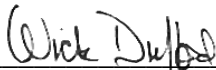
- C. Parking for all kennel customers and employees shall be fully contained on the subject property and shall not include the use of any road right-of-way.
 - D. All lighting shall be directed away from neighboring residences or businesses.
 - E. An approved waste disposal plan that complies with Chapter 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 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 owners 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, subject to the conditions set forth above.

SO ORDERED, this 24th day of November, 2021



Wick Dufford, Hearing Examiner

Transmitted to Applicant, County staff, and interested parties on November 29th, 2021.