

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS CONCLUSIONS AND DECISION

Applicant: Dan Watts
2464 East Blackburn Road
Mount Vernon, WA 98274

Agent: C. Thomas Moser
411 Main Street
Mount Vernon, WA 98273

File No: PL04-0889

Request: Special Use Permit

Location: 2464 East Blackburn Road in the Mount Vernon Urban Growth Area, within a portion of Section 28, T34N, R4E, W.M.

Land Use Designation: Urban Reserve Residential (URR)

Summary of Proposal: To operate indoor and outdoor paintball courses. The project would involve construction of a pole building of approximately 15,000 square feet for the indoor course and use of approximately two acres of land for the outdoor course. Twenty to twenty-five parking spaces on an existing graveled area would be provided.

Public Hearing: After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing On October 26, 2005. After the hearing the Examiner visited the site.

Decision: The application is approved, subject to conditions.

FINDINGS OF FACT

1. Dan Watts (applicant) seeks a Special Use Permit to operate a paintball recreation facility in the Mount Vernon Urban Growth Area.
2. The location of the project is 2464 East Blackburn Road, within a portion of Sec. 28, T34N, R4E, W.M. The parcel number is 27958. The zoning is Urban Reserve Residential (URR). The property is approximately 100 feet east of the intersection of South Cedar Hills Drive and East Blackburn Road.
3. The purpose of the URR district is to allow for the residential use of land in certain unincorporated municipal UGAs at lower than urban densities and without requiring the provision of urban services and/or utilities. The remainder of the land is reserved for more intensive urban residential development in the future. See SCC 14.16.370(1).
4. The subject property is comprised of approximately 6.5 acres located on the south side of East Blackburn Road. It is shaped like the state of Utah, with a bite taken out of the northeast corner. The site now contains a single family residence located in the northwest portion of the property, and a barn and a large garage located in the northeast portion of the property. The area around the home, barn and garage is covered with gravel. There are two graveled access points from East Blackburn Road. The balance of the site is open acreage, with an upward slope to the southeast.
5. The applicant currently resides on the property with his wife and their children. He advises that they are buying the parcel. He represents that anyone who manages the facility will have an ownership interest. The current owner supports this application.
6. The property lies on the edge of the City of Mount Vernon. Properties immediately north of the subject property and Blackburn Road itself were annexed into the City of Mount Vernon in early 2004. To the south and west in the Urban Growth Area there is concentrated residential development on small lots. This development is the established Cedar Hills subdivision. Twelve lots in Cedar Hills directly abut the proposed project site. Larger residential parcels are located on the north and east.
7. Adjacent areas within the city limits have single-family medium density zoning.
8. The applicant proposes to erect a 15,000 square foot pole building for use as an indoor paintball course. He would also like to continue to operate an outdoor course that has been created on about two acres in the southeastern portion of the property.
9. The pole building has not yet been designed, but its approximate footprint is known. The site plan shows the building as 100 feet wide and 150 feet long at a location

just south of the present barn. The building will have walls and will be insulated. Nets will be placed along the inside walls and ceiling to prevent paintballs from hitting those surfaces and making noise audible outside.

10. The outdoor course uses a largely cleared area. The surface is either grass or sawdust. A large number of barricades are scattered throughout the area. These include barrels, wire-rope spools, cinder blocks, wooden fencing segments, and wooden boxes. High fences of netting have been installed along the south and west sides of the outdoor course to ensure that paintballs do not escape from the property.

11. Parking will be provided on the presently graveled area. Additional space will be made available by the removal of the existing barn, and a small pasture area southwest of the garage will also be converted to gravel.

12. The total parking to be provided is not entirely clear. The site plan shows 20 spaces created, mainly in the already graveled area. Twenty spaces is apparently the Staff's estimate of off-street parking demand for the outdoor course. With the addition of the indoor facility, the Staff has estimated a total requirement of 50 parking spaces. However, Staff notes that the applicants may request an administrative decision to reduce the parking requirement by up to 50%. If such a request were made and granted, the total number of required spaces for the entire facility would be 25. With the removal of the barn and addition of some gravel, there looks to be enough space for whatever parking figure is eventually arrived at.

13. The basis for the applicant's proposal of 20 parking spaces is unknown, but may reflect the estimate of traffic impacts. The applicant's project narrative states that, at most, an additional 20 trips per day will be generated by the project proposal. However, it says that on an ordinary day more like 10 additional trips per day might be anticipated. The Staff seems to have accepted this number, although there is no technical basis in the record for it. Public Works did not comment on the traffic projection and there was no comment on the application by the City of Mount Vernon. With the limited information in the record, there is no foundation for concluding that traffic generated by the project will exceed the capacity of the public road system or cause disruption or delay of traffic.

14. During development approximately 2,000 cubic yards of material will be imported to the site and approximately the same amount will be exported. The amount of impervious surface that will be added is in dispute, but it is certainly under 35% of the 6.5-acre site which is the limit allowed for the zone.

15. Residents to the west in Cedar Hills expressed concern about the effect of drainage from the altered site toward their properties. They have already experienced some problems with stormwater. Onsite runoff sheetflows to the northwest, eventually reaching the roadside ditch along East Blackburn Road. From there it flows westward through a series of ditches and culverts approximately 1,000 feet before discharging into Maddox Creek.

16. The applicant had a Drainage Report prepared by a professional engineer. The Report found that little increased runoff will likely occur as a result of the project. Nevertheless, the Report recommended construction of an interceptor biofiltration swale to protect downslope properties from the small increase. The swale is to be built running from south to north adjacent to the western property line. It will be sized to treat the estimated 6 month, 24-hour runoff from project areas and to convey the estimated 100-year, 24-hour flow from project areas. The new swale will have a dispersal structure into the existing roadside ditch. Roof downspout dispersal trenches are proposed for the runoff from the new building.

17. The paintball facility will be a business. The application says that the same two employees that currently work for the existing outdoor paintball course will continue to work at the site. Presumably these employees do not include the applicant himself. No new employees will be required.

18. In the written narrative, the applicant proposed hours of operation from 10 a.m. to 10 p.m. Wednesday through Sunday for the indoor course and from 10 a.m. to sundown Wednesday through Sunday for the outdoor course. Later he modified the request, limiting the hours of the outdoor course on Sunday from 10 a.m. to 2 p.m. However, he asked that he be able to open the indoor course on Monday and Tuesday for special events, such as birthday parties.

19. Vegetation on both the south and western portions of the property acts as a partial barrier to the visibility of the facility. The applicant proposes to plant 20 evergreen trees, a minimum of six feet high, in front of the structures on the outdoor course to make them less visible. Along Blackburn Road between the two existing driveway entrances, he offers to plant a row of pyramidalis trees, each a minimum of five feet high, to the extent that such trees will not interfere with necessary sight lines.

20. The facility will have no special outdoor lighting. The only exterior lights on the property will be such as are used for normal residential security. Any signs on the property will be unlit. Any vending machines will be located out of sight from off the property.

21. The outdoor course was created in 2004 and originally used by the applicant's family and friends. Over time word got around and people from near and far were attracted to the facility and were welcomed there. The course has been actively promoted as "Paint-A-Mania" on a website.

22. The applicants say that the website is not theirs. This is technically true, but disingenuous. The website is maintained by the Paint-A-Mania field manager with the applicant's apparent complicity.

23. The application was reviewed under the Critical Areas Ordinance. A wetland site assessment prepared by a qualified professional found no evidence of wetlands or streams on the property or close enough to encumber it with a buffer.

24. There is no indication that the applicant intends to put a bathroom in the enclosed building. The Health Department noted that if there will be no plumbing to the building (other than a fire sprinkler system) sewage disposal will not be an issue. Sanitary facilities for the paintball operation as a whole will apparently be handled by port-a-potties maintained out-of-doors.

25. The Building Official made comments intended to satisfy concerns of the Fire Marshal. The new building will require a building permit. Prior to being opened for public use, the building must meet all building and fire code requirements of an occupancy classified as A-3, in the 2003 Editions of the International Building Code and Fire Code. This includes requirements for fire flow and may also require fire sprinklers.

26. The record raises the question of whether fire flow requirements can presently be met at the site without a major investment.

27. Environmental review was conducted pursuant to the State Environmental Policy Act (SEPA). A Mitigated Determination of Non-Significance (MDNS) was issued on June 23, 2005 and became effective on July 7, 2005. The MDNS added standard conditions requiring compliance with applicable regulations, including air quality, drainage and sedimentation control, control of noise and light. The MDNS was not appealed.

28. The application was deemed complete on March 1, 2005. A Notice of Development Application was posted on the property and published on March 3, 2005. Notification by mail was given to all property owners within 300 feet of the subject property.

29. The application elicited considerable public comment. The proposal was strongly opposed by a substantial majority of the households in the Cedar Hills Homeowners Association and by the Association itself. Some nearby residents who do not live in Cedar Hills, however, had no objections.

30. The objectors emphasized what they view as the incompatibility of this commercial use with the URR zone. They pointed out that the planning for the area contemplates additional residential development and ultimate inclusion of the area within city boundaries. Commercial development of the size and type proposed would be, they maintained, out of character with present development and with the overall intention for future development.

31. They argued that both the nuisance effects of the outdoor activities and the extraordinary size of the building for the indoor facilities make the project unsuitable for

the particular setting. While vegetation currently acts as a partial screen of the facilities, residents maintained that the site is still visible from many vantages and that the outdoor course, with its numerous barrels and artificial barriers, is unsightly in the residential setting. The addition of port-a-potties will constitute an additional visual affront. The opponents also asserted that the large pole building will be visible and that it will represent a jarring intrusion into a neighborhood otherwise characterized largely by moderate-sized residences. They stated that the efforts to add more landscaping for screening purposes will still not fully obscure the outdoor course or the building from outside views.

32. Screening aside, some Cedar Hills residents testified that the noise from the outdoor paintball activity interferes with the quiet enjoyment of their own properties. No one contends that the noise level exceeds regulatory standards, but rather that the type and duration of noise is intrusive and disturbing, particularly on week ends when people anticipate peace at their own homes.

33. It was underscored that the 15,000 square foot pole building will be roughly half the size of a football field. As one resident put it, the building “would cover my entire lot with my house inside with room left over.” The applicant says he will erect an “attractive” building, but whether a warehouse-like pole building can be made to fit that description is debatable. In any event, a building of the size proposed will be hard to hide. Inevitably, the sheer bulk of the structure will be noticeable in contrast to the small lot residential context. Other large buildings in the vicinity are church and school buildings. There are presently no large commercial structures in the neighborhood.

34. The evidence supports a finding that the likelihood of paint balls escaping the property and marring features on neighboring property is small. The range of the equipment used and the presence of netting along the perimeter should reduce this to a remote and rare possibility.

35. The property lines of the project site will be clearly delineated with construction fencing to make sure that customers do not trespass onto adjacent properties.

36. The paint balls themselves are not likely to do harm to pets or other animals that might encounter them after they have been fired. They are a thin-skinned gelatin capsules with a soy compound inside and are completely water soluble.

37. There was substantial evidence describing the positive effects of paint ball as an activity for young people – particularly for young people who might otherwise be disaffected. The applicant received considerable praise for his focus on cooperation, teamwork, problem-solving and fun. In his supervision of the paint ball enterprise, he emphasizes safety. He is evidently a talented mentor.

38. 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 persons and the subject matter of this proceeding. SCC 14.006.050(b).

2. The application vested to interim regulations for the Urban Reserve Residential (URR) District. At the time of vesting the regulations provided for “Hearing Examiner Special Uses” at SCC 14.16.370(5), as follows:

(5) Hearing Examiner Special Uses.

(a) Bed and breakfast.

(b) Expansion of existing major public facilities greater than 3,000 square feet.

(c) Home Based Business 2.

(d) Kennels.

(e) Pre-schools.

(f) Recreational uses such as golf driving ranges and paint ball courses utilized as businesses. Not included in this category are uses such as motor vehicle driving courses or shooting ranges for guns.

3. The current permanent regulation for URR zones, makes no explicit reference to paint ball courses, but expressly allows “active recreational facilities.” See SCC 14.16.370(4)(a). This is a defined term under SCC 14.04.020 which means:

“[F]acilities usually of a formal nature and often performed with others, requiring equipment and taking place at prescribed places. This includes outdoor recreational facilities, as defined by this chapter, plus other facilities such as go-cart tracks, paint ball courses and tennis courts utilized as businesses that might occur within an enclosed structure. Not included in this category are outdoor race tracks or shooting ranges.”

4. The current regulation under “Hearing Examiner Special Uses,” also includes “race track, indoor.” SCC 14.16.370(4)(q). “Race track, indoor” is defined, as follows:

“[A] course or facility designed to provide for use or racing of motor vehicles, motor cycles, bicycles, animals, etc., and located inside a fully enclosed structure.”

5. The criteria for Special Use Permit approval are set forth at SCC 14.16.900(2)(b)(v), as follows:

(a) The proposed use will be compatible with existing and planned land

use and comply with the Comprehensive Plan.

(b) The proposed use complies with the Skagit County Code.

(c) The proposed use will not create undue noise, odor, heat, vibration, air and water pollution impacts on surrounding, existing, or potential dwelling units, based on the performance standards of SCC 14.16.840.

(d) The proposed use will not generate intrusions on privacy of surrounding uses.

(e) Potential effects regarding the general public health, safety, and general welfare.

(f) For special uses in ... Natural Resource Lands ..., the impacts on long-term natural resource management and production will be minimized.

(g) The proposed use is not in conflict with the health and safety of the community.

(h) The proposed use will be supported by adequate public facilities and services and will not adversely affect public services to the surrounding areas, or conditions can be established to mitigate adverse impacts on such facilities.

6. The Staff analysis concludes that the proposed paint ball courses, both indoor and outdoor, with appropriate conditions, will comply with the above criteria and recommends approval of the application.

7. The pre-eminent issue for “special uses” is whether, with conditions, they can be made compatible with the uses in the zone that are permitted outright. Here that means whether the proposed paintball course be made compatible with the residential uses that are predominant in the zone.

8. Clearly the relevant regulations contemplate that paint ball courses may be approved within the URR zone. This is true under both the interim regulations and the permanent ones. In neither case is the commercial nature of the facilities a problem.

9. The Examiner agrees with the neighbors that the outdoor paintball course is not a particularly aesthetic addition to the neighborhood. However, he believes that the appearance of the outdoor course can be mitigated by appropriate conditions.

10. As to the nuisance effects of the noise, there was no evidence that paint ball is significantly noisier than many other outdoor recreational activities involving collections

of young people. The noise emitted does not violate any formal noise standards. Since parks are allowable uses, noise generation does not appear to be grounds for a finding of incompatibility for recreational paint ball.

11. Arguably under the interim regulation, the recreational uses intended did not include indoor facilities in large non-residential buildings. However, the permanent regulation, with its attendant definitions, makes clear that large indoor facilities may be permitted in the URR district.

12. The vesting doctrine is designed to protect developers from more restrictive regulatory provisions enacted after an application was filed. There is nothing in the doctrine that would prevent developers from taking advantage of later-enacted requirements that are less restrictive. Thus, the type of large indoor recreational facility proposed must be viewed as allowable in the district.

13. The considerable size of the building would, at first blush, appear to support a conclusion that it cannot be considered compatible with its residential surroundings. But, the compatibility needed is compatibility “with existing and planned land use.” Here, the planned land use includes “go-cart tracks, paint ball courses and tennis courts utilized as businesses that might occur within an enclosed structure.” All of the potential indoor uses mentioned are uses that would require a large building to house. Moreover, the separate listing of indoor race tracks as potentially allowable reinforces the notion that buildings of the size contemplated here can be permitted in the URR zone.

14. Because the regulations that implement the URR zone’s purposes expressly mention allowing paint ball courses, the question becomes: Is there anything about the situation adjacent to the Cedar Hills neighborhood that makes this particular paint ball proposal any more jarring than it would be elsewhere in the zone? Put another way, if this proposal is disapproved, is there anyplace in the URR zone where a paint ball proposal could be approved?

15. After much reflection, the Examiner concludes that this proposal must be given the go-ahead, subject to conditions. Otherwise, he is unable to conceive of a situation where either an outdoor or an indoor paint ball course could be allowed consistent with the dominant residential character of the zone. The result is dictated by the language of the regulations. As contemplated by the Code, the proposed use will be consistent with existing and planned land use.

16. The remainder of the criteria for Special Use approval will also be met. The use is allowable under the Code. No inconsistency of the proposal with the Comprehensive Plan has been identified.

17. The environmental effects of the proposal will not be significant. The requirements of SEPA have been met. The noise created will not violate noise standards. The drainage controls will satisfactorily control flooding and pollution.

18. The proposed operation of the 6.5 acres site will adequately control the activities authorized and confine them to the property. There is little threat of intrusion on the privacy of surrounding uses,

19. Great care is to be taken to insure the safety of the participants. Off-site safety impacts are not anticipated. Neither the general nor the local health, safety and general welfare are threatened by this proposal. There will be no impacts on natural resource lands.

20. The proposal will be conditioned to insure that all of the facilities are supported by adequate public services. No adverse impact on such services to the surrounding areas will occur.

21. Accordingly, the criteria for approval of a Special Use Permit are met, if the conditions below are imposed.

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

CONDITIONS

1. The proposal shall be constructed and operated substantially as proposed in the application materials, except as the same may be modified by these conditions.

2. The applicant shall obtain all other necessary permits and approvals, including any necessary grading and building permits.

3. The applicant shall comply with the conditions set forth in the MDNS as issued on June 23, 2005, as follows:

a. The applicant shall comply with Northwest Air Pollution Authority requirements.

b. The applicant shall comply with the provisions of Chapter 14.36 of the Skagit County Code, the Skagit County Drainage, Water, Sedimentation Control Ordinance, as it relates to increased runoff resulting from additional impervious surfaces.

c. The applicant shall comply with SCC 14.16.840, the Performance Standards, and WAC 173-60 for noise and light conditions.

- d. The applicant shall comply with Fire Code Standards.
 - e. An engineered soils compaction report shall be required for all structures placed on fill material.
 - f. The applicant shall comply with all relevant provisions of 14.24 (Skagit County Critical Areas Ordinance).
4. The applicant shall comply with all other relevant regulations, including Chapter 173-201A WAC and 173-200 WAC, relating to surface and ground water quality.
 5. The approved activity is limited to outdoor use only, until such time as a building meeting the fire and building code requirements for this type of use has been approved. The occupancy or use is classified as A-3, in the 2003 Edition of the International Building Code and Fire Code. To be used for the activity proposed, the building must meet all building and fire code requirements for A-3 occupancies, including fire flow. Fire sprinklers may be required.
 6. The general public and any employees of the owner or operator shall not have the use of any building for any purpose unless the building has been approved for public use by the Building Official and Fire Marshal. Until public use has been approved, the use of any existing building is limited to the personal and private activities of the owner or operator and his/their family.
 7. All existing buildings in which a change of use is intended are required to obtain a building permit for the change of use and cannot be occupied for such use until approval is granted by the Building Official.
 8. Prior to building permit approval, the applicant shall comply with any additional Fire Marshal requirements.
 9. This approval is predicated on the assumption that the applicant intends no plumbed water to the proposed paintball building. Otherwise, a public water application billing copy or current letter of approval from the PUD is required for approval of the building permit.
 10. Approval of the Special Use does not support a future land division.
 11. The City of Mount Vernon's road access requirements shall apply to the project. The applicant shall obtain access approval from the City of Mount Vernon.
 12. The applicant shall provide the number of parking spaces required by the Department of Planning and Development Services after the provisions of SCC 14.16.800 have been fully applied.

13. Hours of operation for the outdoor course shall be from 10:00 a.m. to sundown, Wednesday through Saturday; and from 10:00 a.m. to 2:00 p.m. on Sunday. Hours of operation for the indoor course shall be from 10:00 a.m. to 10:00 p.m., Wednesday through Sunday. The indoor course may be open on Monday and Tuesday for special events such as birthday parties.

14. The applicant shall purchase and plant a total of 20 evergreen trees, with a minimum height of six feet, in front of structures on the outdoor course to make these structures less visible.

15. The structures on the outdoor course shall be finished in earth tones or other shades that will blend with the surroundings. Bright blue or other contrasting colors shall not be used.

16. Around the structures on the outdoor course, the applicant shall plant vines or other vegetation that has the potential for covering and concealing the structures.

17. The applicant shall plant a row of pyramidalis trees, with a minimum height of five feet, along East Blackburn Road between the two existing driveway entrances, as feasible consistent with lines of sight.

18. The applicant shall clearly define the boundaries of the outdoor course for the participants prior to events and shall supervise participation in order to prevent trespass or possible conflicts with the use of neighboring properties. Nets shall be deployed along the west and southern boundaries of the outdoor course in order to prevent paint balls from escaping the property.

19. No illuminated signs will be allowed on the property. Any proposed signs shall be reviewed for compliance with SCC 14.16.820 prior to being installed.

20. Any vending machines kept out of doors shall be shielded from view from off the property. Port-a-potties shall be similarly shielded to the extent feasible.

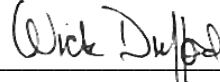
21. The Planning and Development Services Department shall be notified within 30 days of any change in ownership of the subject parcel or of the business thereon through a letter referencing permit number PL04-0889.

22. The Special Use Permit shall be void unless work is started with two years of the date of permit approval or if abandoned for any period of one year.

23. Failure to comply with any permit condition may result in permit revocation.

DECISION

The requested Special Use Permit is approved, subject to the conditions set forth above.



Wick Dufford, Hearing Examiner

Date of Action: January 4, 2006

Date Transmitted to Applicant: January 4, 2006

RECONSIDERATION/APPEAL

As provided in SCC 14.06.180, a request for reconsideration may be filed with Planning and Development Services within 10 days after the date of this decision. As provided in SCC 14.06.120(9), the decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with Planning and Development Services within 14 days after the date of the decision, or decision on reconsideration, if applicable.