

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS AND ORDER OF REMAND

Applicant: Travis Lundgren
16645 Dike Road
Mount Vernon, WA 98273

File No: PL08-0439

Request: Special Use Permit

Location: 16645 Dike Road, within a portion of the SE1/4NE1/4 Sec. 25,
T34N, R3E, W.M.

Parcel Nos: P16645

Land Use Designation: Agricultural Natural Resource Land

Summary of Proposal: To operate an existing kennel (Skagit River Kennels) for the
breeding and selling of Rottweiler and Saint Bernard dogs.

Public Hearing: After reviewing the report of Planning and Development Services,
the Hearing Examiner conducted a public hearing on November 4,
2009.

Decision: The application is remanded to Planning and Development
Services for further investigation.

FINDINGS

1. Travis Lundgren seeks a Special Use Permit to operate a kennel for the breeding and selling of Rottweiler and Saint Bernard dogs. The subject kennel facility existed prior to the adoption of current kennel regulations. It is being processed under Ordinance #020080004,

2. The facility is located at 16645 Dike Road, within a portion of the SE1/4NE1/4 Sec. 25, T34N, R3E, W.M. The property is Parcel Number P16645, on the east side of Dike Road just west of the city limits of Mount Vernon.

3. The property is zoned Agricultural Natural Resource Land (Ag-NRL). It is approximately eight acres in size and is rectangular in shape, except for a jog along the south property line. The property measures approximately 408 feet on the west (front), 612 feet on the north (side) 496 feet on the east (rear) and 700 feet on the irregular south (side) property line

4. The adjacent properties are a combination of farm fields that are currently in production and small acreage residential lots. There are a number of residences in the near vicinity to the south.

5. In addition to the kennel area, the property is used for hay production and equipment storage. The parcel is part of a larger farming operation, connected to a dairy across the street run by the applicant's family. There is a residence near the road and there are separate office and storage buildings behind the residence. A number of structures on the property, either built or being built, have not received the required building permits. According to the Staff Report the applicant has had almost 15 months from the date of submittal of his application to complete improvements.

6. The kennel is located in the southeast portion of the site away from the road. There are four puppy runs that are 15' x 15' and surrounded by wooden walls. East of these are three separate 8' x 12' wooden birthing houses, surrounded by a wire fence to create a 16' x 50' exercise area. Farther east, near the back of the property are the adult dog runs, which measure 16' x 36', with chain link fencing on the front and back and solid paneling in-between. In front of the adult runs is a fenced exercise area measuring 50' x 225'.

7. The runs and exercise areas are covered with wood shavings. The dogs are let out of the runs twice a day to exercise while the runs are being cleaned. Shavings are replaced as needed.

8. The applicant is creating a six-foot dirt wall behind (east of) the adult runs to help screen the operation and to cut down on noise. Another wall is being built for the same purpose in front of the exercise area that borders the adult runs. This latter wall will consist of six feet of dirt with ecology blocks on top, so the total height is 10 feet. In the past, hay has been stacked in front of the exercise area. The new wall structures will require building permits. Moreover, a fill and grade permit is required anytime 12 inches or more of material is placed in an area.

9. The site plan submitted shows trees being planted along the south property line. It is not known what type of trees these will be. Otherwise the property is open to views from the outside. The Staff has suggested that trees be planted in back of the adult runs instead of building the six-foot dirt wall there.

10. Customers come to the site by appointment to pick up dogs that are sold. There is ample parking. On average there are two or three customers a week when puppies are available. There was no information about how the dogs are advertised or who they are sold to.

11. After environmental review under the State Environmental Policy Act (SEPA), the County issued a Mitigated Determination of Non-Significance (MDNS) on July 28, 2009. The MDNS was not appealed.

12. The MDNS contained conditions for the disposal of solid waste which allowed for the use of an approved agricultural waste plan. The applicant has opted for this alternative. The solid waste disposal is part of the farm operation. After the runs are cleaned, the waste is stockpiled outside the run area. The kennel operation transports about 50 gallons of solid waste a week to the farm where it is mixed with a much larger amount of cow waste on a concrete slab. From time to time the waste is worked into the fields. A farm plan prepared by the Soil Conservation District and describing this operation was submitted with the application. The plan was reviewed by the Skagit County Health Department which accepted it, subject to the following conditions:

1. The revised plan will need to be signed off by the Conservation Board.
2. Application will be limited to the two fields containing ornamentals and hay.
3. The Conservation District will need to affirm annually that the conditions of the plan are being satisfied.
4. Modification of these conditions will require a new plan or revision to the plan.
5. The dog waste will need to be adequately mixed and processed with the cattle waste so that after application the dog waste is not identifiable.

A note was added: "If complaints from neighbors are received the plan may need to be revisited."

13. At the hearing in this matter, there was substantial opposition to this application. There were thirteen public comment letters, all urging that the application be denied. They expressed concerns about safety, noise, waste management, and the overall supervision of the operation. Similar concerns were expressed by six citizens who testified.

14. The safety concern involves a number of incidents where some of the dogs have managed to get out of the kennel and wander the neighborhood. The neighbors are concerned

that Rottweilers are an aggressive breed and are worried that these dogs may not be adequately socialized, posing a danger to children and adults they encounter. Several said that they are reluctant to walk their own dogs past the Lundgren property.

15. The noise concern is apparently one of long standing. The barking of the dogs, including barking at night, has been a significant irritant to neighbors.

16. The waste management issue involves the difficulty of composting dog waste enough to kill bacteria. The Health Department's initial concerns about this matter have apparently been resolved after further review of the Conservation District's plan.

17. As to overall supervision, there is cause for doubt. According to the application, the applicant has no employees. He is also involved in the farming operation. There is a question as to whether he has the time to adequately manage the kennel. The incidents involving dogs getting out reinforce this concern. Further, the failure to timely complete planned improvements or to obtain required permits tends to undermine confidence in the likelihood of long-term compliance with conditions of approval.

18. The Humane Society of Skagit Valley wrote a letter of opposition and testified in opposition. They urged that questions regarding the health and welfare of the animals be asked. They noted that the applicant's materials make no mention of a veterinarian or veterinarian visits, and said, "We do not know from the information submitted what health the dogs are in."

19. The Humane Society also asked about compliance with SCC 14.16.900(2)(i)(vii) which states that "all animals must be contained in enclosed buildings between the hours of 9 p.m. and 8 a.m." There is no building large enough to house 25 Rottweillers and Saint Bernards at night. However, each of the dogs runs does have a custom-built dog house that is 4' x 4' x 8' in size.

20. The applicant did not appear at the hearing to respond to the issues raised. The record, however, was left open to provide him an opportunity to do so, and the County was then given another week to respond to what the applicant had to say. The applicant's response was brief. It reiterated plans for building the dirt walls, noted that a new farm plan will allow waste spreading only on hayfields, and stated that Animal Control has been to the site numerous times and had no complaints about animal safety or health.

ORDER

1. The Examiner concludes that further investigation needs to be done before a decision is made on this application. The matter is remanded to Planning and Development Services to develop further information on:

a) The measures taken to insure the health and welfare of the animals on site. Are they kept clean and well-fed? Are they given individual attention and taught to interact positively with people? What sort of veterinary care do they receive? Are they given the appropriate shots?

b) The measures taken to insure that healthy dogs are marketed. Is there any sort of health guarantee in the contract of sale? Can the dogs be returned? Have dogs been returned? Who are the typical buyers?

c) Particular steps taken to prevent animal escapement. Have these measures been successful? Should they be improved?

d) Ability to effectively oversee the operation. Have the improvements the applicant has planned been made? If not, when is a reasonable date for their completion? Have all needed building permits been obtained? What amount of time does the applicant have to devote to the care of the dogs? Would it be advisable in the interests of the animals that additional help be hired?

e) Effectiveness of the efforts at noise control. Are dirt walls and a row of trees realistically likely to reduce noise significantly? Without installing a building to contain the dogs at night, is it reasonable to expect that this facility will be able to eliminate frequent noise complaints from neighbors? Is this an appropriate site for a kennel in light of the potential for noise?

2) PDS should also contact Animal Control and get an assessment from them of any complaints they have received and whether they believe there are any problems with the care of the animals.


3) PDS should also evaluate the arrangement of using dog houses inside the individual dog runs. Does this satisfy the requirement of SCC 14.16.900(2)(i)(vii) for containing animals at night in enclosed buildings?

4) The Staff is requested to make a further report on the matters identified and any other issues they think should be addressed.

5) The decision is deferred until further report is made.

6)

SO ORDERED this 9th day of December, 2009.



Wick Dufford, Hearing Examiner