

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

In the Matter of Special Use Permit)	
PL08-0439)	
)	
Skagit County Department of)	PL10-0433
Planning and Development Services,)	
)	
Petitioner,)	
)	ORDER MODIFYING PERMIT
v.)	AND DENYING REQUEST TO
)	REVOKE
Travis Lundgren,)	
)	
Permittee)	
_____)	

THIS MATTER, came on regularly before the Hearing Examiner on October 20, 2010, upon due notice. Ryan Walters, Deputy Prosecuting Attorney, represented Planning and Development Services (PDS). Richard Hughes, Attorney at Law, represented Travis Lundgren

The subject matter was PDS' request to revoke or modify the permit (PL08-0439) issued to Lundgren to operate Skagit River Kennels, an existing limited kennel operation for the breeding and selling of Rottweiler and Saint Bernard dogs.

BACKGROUND

On March 17, 2010, the Hearing Examiner approved Lundgren's application for a Special Use Permit subject to a condition requiring the applicant to "construct an enclosed building for containment of the adult dogs at night." Condition 7 then required the applicant to "obtain all other permits required for the operation of this limited kennel, including building permits necessary for compliance with these conditions," and set the following deadlines:

- (a) Required building permits shall be applied for within 90 days of the date of the decision herein.
- (b) Physical work needed to achieve compliance with these conditions shall be completed no later than one year from the date of the decision herein.

The Examiner's decision was appealed to the Board of County Commissioners both by neighbors and by Lundgren. On June 8, 2010, the Board of County Commissioners by Resolution upheld the Examiner's decision and denied the appeals. Lundgren then appealed the requirement for an enclosed building for containment of the dogs at night to the Superior Court under LUPA. The LUPA appeal is still pending.

Following issuance of the Commissioner's Resolution, PDS and Lundgren attempted to negotiate a settlement. During the course thereof, PDS granted Lundgren an extension of the deadlines established in order to allow additional time for "negotiation and possible resolution." Thereafter, the County advised counsel for Lundgren that settlement would not be pursued further. Via this process, the parties are agreed, the deadline for submission of the Lundgren applications became September 22, 2010.

On September 22, 2010, Lundgren submitted four applications: one for birthing houses, one for an office, one for a storage shed, and a fourth for the grading of earthen berms. Except for the appealed building, there is no argument that these applications do not constitute the permits required for operation of the kennel.

On September 27, 2010, PDS sent Lundgren's counsel a letter of incompleteness for Lundgren's permit applications. The letter detailed the matters that needed to be supplied to make the applications complete and stated:

To continue review of these application, the requested information must be received by our department within 180 days of the date of this letter as required by Skagit County Code 14.06.100(3). Once our department has received the above information for each application, the review of these applications can continue.

SCC 14.06.100(3) states that if additional information is required for an application determined to be incomplete, the applicant shall have 180 days to submit the required information to the Department. If the applicant does not submit the required information within the 180-day period, the application shall lapse.

However, the PDS letter of September 27, 2010, went on to say that the applications submitted did not satisfy the conditions of the Hearing Examiner's decision of March 17, 2010, because the specified deadlines were not met. The letter said a request would be filed with the Hearing Examiner that he revoke the Special Use Permit under SCC 14.16.900(1)(b)(iii). The latter subsection gives the Examiner authority to revoke a permit based on a finding that the conditions have not been satisfied by the applicant.

The letter also stated, "We will issue a Notice and Order to abate the code violations arising from construction of buildings and earthen berms without appropriate permits."

PDS then made notice of a public hearing before the Examiner on "the department's proposal to revoke or modify Special Use permit PL08-0439." The notice was published on September 30, 2010. The hearing was scheduled for October 20, 2010.

At the scheduled time the hearing was held. The Staff made its Staff Report available to the Examiner at the commencement of the hearing. No Notice and Order was issued prior to the hearing.

PDS apparently takes the position that the 90 day period for applying for required building permits did not commence to run until the date the Board of County Commissioners issued their decision on the appeal of the Hearing Examiner's decision. The Examiner concurs, in light of SCC 14.06.230, under which all proceedings are stayed during the pendency of administrative appeals.

PDS also apparently believes that it could appropriately suspend the running of the submission time lines while negotiations were being pursued. The Examiner concurs that deadlines established as permit conditions may be administratively extended while efforts to pursue resolution of related issues are going forward. This is consistent with the purpose of the Unified Development Code to foster efficient, timely and reasonable administration of development.

The building permit applications submitted did not include an application for the enclosed building to house the dogs at night presumably because the need for this structure is still pending in the LUPA appeal to Superior Court.

At the permit revocation hearing, public testimony was offered by Sandy Nelson (on behalf of the Humane Society) who opposed continuation of the kennel because of asserted mistreatment of the dogs and because an adequate enclosed building for them has not yet been constructed. Due process would require separate notice and an opportunity to defend before any issue of inhumane treatment could be considered. Moreover, as noted, the need for the enclosed building has not been finally decided.

DISCUSSION

Regarding its request to revoke, PDS took the position that the requirement for submission of applications within 90 days implied a requirement that the applications submitted be complete within that time frame.

As to the lack of application for an enclosed building, PDS argued that since no stay of the condition requiring such a building has been entered in the LUPA appeal, the 90 day limit applies to submitting an application for that building.

Counsel for Lundgren asserted that the applications which were made were timely and that the Examiner's decision imposed no requirement that they be complete within the time period specified. If it were otherwise, he argued, the application submission condition would violate due process because of its vagueness.

PDS contended that the subject applications are woefully short of complete and thus fail to meet some unarticulated threshold for allowable incompleteness. The Examiner is in no position to evaluate the substance of the applications and how close they came to completeness.

The system into which the applications were submitted is one that explicitly contemplates that applications will often be incomplete and that time will need to be taken to make them complete.

The Examiner takes notice that the process of creating complete development applications is complex and detailed. Professional assistance is commonly used. And, indeed, a function of PDS is to explain the process and to help people complete their applications.

The applications in question betray a lack of sophistication with the process. But, no claim was made that the applicant has been dragging his feet or refusing to cooperate. The Examiner is convinced that the applications represent a good faith attempt at compliance with the permit condition.

After reviewing his decision and considering the record and the arguments, the Examiner concludes that the applications were timely. The 90 day application condition does not include a clear requirement for complete applications within that time frame.

As to the failure to apply for the enclosed building, the Examiner's sense of fairness is offended by the idea that a permit could be revoked for failing to pursue a key condition of approval while that very condition is under appeal. If the requirement for an enclosed building is overturned, there will not have been any need for the submission of plans for such a building.

Part of the problem here may be the failure of the Examiner to fashion the conditions clearly and precisely. Having been persuaded that the applicant should be given a chance to continue to try to satisfy the permit conditions, the Examiner hereby makes the following modifications to those conditions:

Conditions 7(a) and (b) are changed to read:

"(a) Except for any requirement under appeal, building permits relating to operation of this limited kennel shall be applied for within 90 days of the date of the final decision herein by the County. Applications submitted shall be completed within 180 days of the date of any letter of incompleteness, as provided under SCC 14.06.100(3).

(b) Physical work needed to achieve compliance with these conditions shall be completed no later than one year from the date the applications are completed."

Add a new Condition 7(c) to read:

"(c) The submission of an application for a building permit for any building which is the subject of a judicial appeal may be deferred until the requirement for such building is finally determined. If such requirement is sustained, the building permit shall be applied for within 90 days of the final decision to that effect. Any such application shall be completed within 180 days of the date of any letter of incompleteness as provided under SCC 14.06.100(3)."

No issue was raised here about the submission of plans pursuant to Condition 10 of the permit. Nevertheless to forestall any potential questions, the last line of Condition 10 is hereby amended to read:

"The above plans shall be provided to PDS on or before December 3, 2010."


In light of the above discussion, the Examiner enters the following Order.

ORDER

The Hearing Examiner's decision dated May 17, 2010 and Special Use Permit PL08-439 are modified to incorporate the changes set forth above.

The request of Planning and Development Services (PDS) to revoke PL08-439 is denied.

DONE this 28th day of October, 2010.



Wick Dufford, Hearing Examiner