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Skagit County Auditor

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AFTER RECORDING RETURN TO:
SKAGIT COUNTY HEARING EXAMINER
302 SOUTH FIRST STREET
MOUNT VERNON, WA 98273

DOCUMENT TITLE: ORDER ON REMAND - APPEAL PL06-0129

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPELLANTS: CEDAR HILLS HOMEOWNERS ASSOCIATION

ASSESSOR PARCEL NO: P#27958

PROPERTY LOCATION: The project is located at 2464 East Blackburn Road, Mount Vernon, within a portion of Section 28, Township 34N, Range 4E W.M., Skagit County, Washington.

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

**CEDAR HILLS HOMEOWNERS
ASSOCIATION,**

Appellant,

v.

**SKAGIT COUNTY, DAN and
ALLYSON WATTS**

Respondents.

PL06-0129

ORDER ON REMAND

PROCEDURAL HISTORY

Dan and Allyson Watts (the Watts) applied for a Special Use Permit (File No. PL04-0889) for the operation of indoor and outdoor paintball courses on property owned by Rick Hansen at 2464 East Blackburn Road.

The property is within the Mount Vernon Urban Growth Area. The zoning is Urban Reserve Residential (URR).

After a hearing, the Hearing Examiner approved the permit on January 4, 2006, subject to numerous conditions.

The Cedar Hills Homeowners Association (Homeowners) appealed the approval to the Skagit County Board of Commissioners. The Commissioners held a closed record hearing and on August 28, 2006 issued Resolution #R20060294 which remanded the matter back to the Hearing Examiner to consider further conditions "to ensure that the special use will be compatible with the residential nature of the neighborhood and not adversely affect or prevent neighboring residential uses."

The Hearing Examiner scheduled a settlement conference among the Watts, the Homeowners and the County. The conference, held on October 17, 2006, resulted in no settlement and a remand hearing was set for November 29, 2006. The idea that mediation of the matter might be explored was left open.

A mediation session with Skagit Mediation Services was held on November 28, 2006, and the remand hearing was continued to December 20, 2006.



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Through the mediation process, a settlement was reached. The Settlement Agreement among the Homeowners, the Watts and Hansen was entered on December 17, 2006, after ratification by the Homeowners.

The remand hearing was held on December 20, 2006. Gary Jones, Attorney at Law, represented the Homeowners. Tom Moser, Attorney at Law, represented the Watts. Brandon Black, Planner, represented the County.

The Settlement Agreement was read into the record. Public testimony as solicited and several neighbors testified, in general expressing reservations about the settlement.

FINDINGS

1. The factual matters set forth in the above Procedural History are hereby adopted as findings.
2. At the remand hearing, counsel for the Homeowners noted that while the Settlement was ratified by the association, the consent was not unanimous.
3. The mediation process dealt solely with the outdoor paintball course. The indoor facility was not addressed. The Homeowners asked that provisions of the Hearing Examiner's decision concerning the indoor facility not be modified.
4. The Settlement is an agreement among named persons or entities and does not purport to run with the land. The prior record substantiates that the Watts are in the process of acquiring the property from Hansen.
5. The Settlement Agreement in full reads as follows:

We, Allyson and Danny Watts and Rick Hansen and the Cedar Hills Homeowners Association represented by Murphy Hektner, Pat McLatchy and Philip Jennewein, having participated in a mediation session on November 28, 2006 and being satisfied that we have reached a fair and reasonable settlement, hereby agree as follows:

[1] The Watts will limit operation of the outside paintball course to the following days and hours: 10:00 AM to 4:00PM on Saturdays and Sundays year round. From June 10 to September 10 the course may also be used on Wednesdays from 10:00 AM to 4:00 PM. One day on one weekend each month, determined by mutual agreement among the parties, the outdoor course will be closed. The Watts will be open to receiving requests for other days being closed for special events. The Homeowners Association will be open to receive requests from the Watts for occasional extension of the above hours of operation. The request should be presented to the President of the Cedar Hills Homeowners Association.



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The Homeowners Association is in agreement with the Watts that an outside paintball game may take place after 4:00 PM without a specific request when the players are limited to Dan and Allyson Watts and their two children.

[2] Philip Jennewein, Murphy Hektner, Rick Hansen and Daniel Watts will walk the part of the Watts property where the net will be installed and the trees planted.

[3] The Watts will install a 20-foot high net for 300 feet along the property line between their property and the properties of Murphy Hektner and Philip Jennewein.

[4] The Watts and their neighbors will communicate about matters related to compliance with this agreement. In mid-August 2007, Allyson Watts will initiate setting up a meeting of the parties in the mediation session to discuss the way things are working out.

[5] The Watts give assurance that the outdoor course will never be operated without a monitor, and that no speedball games will be played outside.

We intend the above agreement to be a legally binding and enforceable settlement contract for the period of one year, at which time all the signing parties will meet to discuss any issues, with the intent to renew the agreement unless modified or terminated by mutual agreement.

[Followed by the date and signatures]

6. The Homeowner's major remaining concern is that adequate provisions be made for continuing the terms of the Settlement in the event the Watts transfer their rights to the property.

7. The Examiner understands that one purpose of the settlement is to reduce the amount of noise and disturbance to neighboring properties from outdoor paintball activities. The requirement for a monitor is intended to insure that shouting and obscene, unduly aggressive or otherwise offensive language is not used during the sessions. A "monitor" is understood to mean an adult familiar with the terms and intent of the settlement.

8. The Examiner construes the agreement to mean that no outdoor paintball shall be carried on outside of specifically consented to hours except by the Watts and their children. Even those family games, however, will be subject to the requirement for a monitor.



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9. Some of the neighbors who testified at the hearing expressed continuing opposition to the indoor facility, arguing that a building of the size contemplated has no place in the otherwise predominantly residential neighborhood. Witnesses reported that a large building is already under construction, apparently as an accessory to the residential buildings already on site. The record contains no information about whether the construction now underway meets applicable codes and standards.

10. A magazine and a video were submitted to support the assertion that paintball is violent by nature – the implication being that it may not be possible to control outdoor paintball activities effectively, particularly outdoor tournaments. The Watts agreed to a condition that would require all tournaments to be held indoors. Allyson Watts testified that the emphasis on violence in some media materials does not represent their approach. They seek to make the paintball experience family friendly.

11. Most of the neighbors who testified said that they were withholding most of their remarks pending the completion of a year under the settlement agreement. The Homeowners requested that another hearing be scheduled toward the end of the year in question to review the experience under the settlement and consider whether the outdoor paintball activities should be modified, clarified, suspended or revoked.

12. One witness urged that a condition be added requiring that any planting of trees or vegetation pursuant to conditions of permit approval be planned by a landscaper or arborist and that maintenance and survival be required. Watts' counsel assured that appropriate professional help will be secured.

13. One additional public letter (Kevin and Jeannie Revoir) was submitted for the hearing and considered by the Examiner. Planning and Development Services remained on the sidelines, but apparently acquiesces in the implementation of the settlement.

13. The Settlement Agreement establishes a regime in which outdoor games, whether commercial or private, are subject to regulation. The Hearing Examiner concludes that the Settlement Agreement embodies a reasonable approach to the compatibility question that should be given a chance to succeed.

CONCLUSIONS

1. The Examiner's decision, as modified below to incorporate the terms and the spirit of the Settlement Agreement, is consistent with the remand from the Skagit County Board of Commissioners.

2. The Watts' attention is directed to Conditions 5 through 9 of the original permit decision. These conditions, dealing with legal compliance of the indoor facility, remain in effect. While this proceeding is concerned with terms of approval and not with enforcement, the County retains full authority to enforce all permit conditions.



CONDITIONS

The "original decision" is the decision entered by the Hearing Examiner on January 4, 2006 in this matter,

1. Conditions 1 through 12 of the original decision remain in effect.
2. Condition 13 is stricken. The terms of the Settlement Agreement dated December 17, 2006 (See Finding 5 above) are inserted as new Condition 13.

3. Conditions 14 through 17 of the original decision remain in effect.

4. Condition 18 is modified to read as follows:

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. The Watts will install a 20-foot high net for 300 feet along the property line between their property and the properties of Murphy Hektner and Philip Jennewein.

5. Conditions 19 and 20 of the original decision remain in effect.

6. Condition 21 is modified to read as follows:

In matters covered by any Settlement Agreement this permit is personal to the applicants and shall not run with the land. Prior to the transfer of ownership of the subject parcel or of the business thereon, the applicants shall notify Planning and Development Services of the impending transfer. Before such transfer takes place, the Hearing Examiner shall hold an open record hearing for the purpose of securing the explicit consent of the transferee(s) to the conditions of any Settlement Agreement then in effect. If such consent is withheld, the Examiner may revoke, suspend or modify the permit in respect to outdoor paintball, as appropriate in light of the requirement for compatibility with other uses in the neighborhood. This condition shall not apply to any transfer of the property from Rick Hansen to the Watts.

7. Condition 22 is modified to read as follows:

- a. The Settlement Agreement is effective through December 17, 2006. The parties hereto shall contact the Hearing Examiner's Office for the scheduling of an open record hearing prior to the expiration of the Agreement for the purpose of reviewing the experience under the Agreement and of learning whether it will be extended by the parties.



As a result of such a hearing, the Examiner may revoke, suspend or modify the permit in respect to outdoor paintball as necessary to achieve compatibility with other uses in the neighborhood.

b. In all other respects, the Special Use Permit shall be void unless work is started within two years of the date of permit approval or if abandoned for any period of one year.

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

8. Condition 23 is stricken. The following is inserted as new Condition 23.

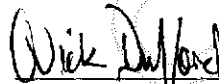
All paintball tournaments held on the property shall be held indoors.

9. A new Condition 24 is added to read as follows:

Any trees or vegetation planted pursuant to this permit shall be installed according to the plan of a qualified landscaper or arborist and subject to his or her supervision. The plantings shall be maintained so that at least 90% survival is achieved after a period of three years. If that percentage is not achieved, additional plants will be installed and maintained to achieve at least a 90% overall survival rate.

DECISION

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



Wick Dufford, Hearing Examiner

Date of Action: January 5, 2007

Date Transmitted to Parties: January 5, 2007

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.

