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Skagit County Auditor

2/28/2007 Page 1 of 9 2:02PM

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

DOCUMENT TITLE: ORDER ON REQUEST FOR RECONSIDERATION  
REMAND OF APPEAL AP06-0129  
(OF SPECIAL USE SU04-0889)

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPELLANTS: CEDAR HILLS HOMEOWNERS ASSOCIATION

RESPONDENTS: DAN and ALLYSON WATTS

ASSESSOR PARCEL NO: P27958

LEGAL DESCRIPTION: The project is located at 2464 East Blackburn Road, Mount Vernon, WA; 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 & ALLYSON  
WATTS,

Respondents.

PL06-0129

ORDER ON REQUEST  
FOR RECONSIDERATION  
OF REMAND ORDER

BACKGROUND

A hearing was held on December 20, 2006, regarding the County Commissioners' remand of an appealed Special Use Permit decision. The permit relates to the operation of indoor and outdoor paintball courses by Dan and Allyson Watts on property owned by Rick Hansen 2464 East Blackburn Road.

The hearing considered a Settlement Agreement between Watts/Hansen and the Cedar Hills Homeowners Association represented by Murphy Hektner, Pat McLatchy and Philip Jennewein. On January 6, 2007, the Examiner entered an Order on Remand, altering certain of the conditions of the original permit decision to conform to the settlement and providing for subsequent review of the experience under the agreement. A typographical error in the Order was later corrected to confirm that the Settlement Agreement is effective through December 17, 2007.

REQUEST

On January 12, 2007, the Homeowners Association filed a Request for Reconsideration of certain aspects of the Order on Remand.

They requested that the last quoted paragraph of the Settlement Agreement be modified to reflect emphasis on the word "any" as follows:

"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."

They asked that the Homeowner's be among those notified prior to the transfer of ownership of the subject parcel or of the business thereon.



They contended that the Settlement Agreement bars transfer of the Special Use Permit for one year.

They requested modification of the last sentence of Condition 22(a) of the permit to add the following underlined language:

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

They also requested that the conditions be modified to reflect the original hours of operation for indoor paintball activities.

Finally they asked that new Condition 24 be modified to add the following underlined language:

"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. Species, quantity, and size of evergreen trees planted may vary from the original specifications, provided they meet or exceed those specifications and provide vegetative sight and sound screening. 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."

## RESPONSE

In response to the Request for Reconsideration, the Watts advised that further discussions had been held between the parties to the Settlement Agreement and that on February 15, 2007, they had agreed to a clarification of their agreement, as follows:

"1) The hours of operation agreed upon:

a) Outdoor hours mutually agreed upon in the mediation agreement are: 10:00 AM to 4:00 PM 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 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.

b) Indoor hours mutually agreed upon by the parties of the



mediation hearing: Indoor hours will be 10am to 10pm, seven days a week, with the only exception being Friday, when the hours extend until midnight on a trial basis.

- 2) It is the understanding of the parties present during the mediation agreement; that the one year review should stay intact and will include both indoor and outdoor courses. This review should help to prove the the willingness of both parties to work together toward a successful outcome for everyone.
- 3) The parties present during the mediation agreement agree there has been no violation of the mediation agreement nor breach of confidentiality.

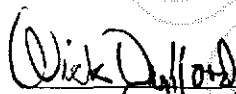
The Watts counsel stated that his clients have no objection to the other proposals and requests in the Motion for Reconsideration.

### ORDER

Having considered the submissions of the Homeowners and the Watts, the Examiner concludes that the Request for Reconsideration should be granted and that the terms of the clarification agreed to on February 15, 2007, should be incorporated into the conditions of approval for the Special Use Permit.

The conditions of approval are therefore modified as set forth in Attachment A hereto. Attachment A sets forth all of the applicable conditions in full.

The requested Special Use permit is approved, subject to the conditions set forth in Attachment A.



Wick Dufford, Hearing Examiner

Date of Action: February 28, 2007

Date Transmitted to Parties: February 28, 2007

### APPEAL

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.



**ATTACHMENT A**  
**CONDITIONS OF APPROVAL**

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 employee 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. The applicant shall conform to the terms of the Settlement Agreement entered on December 17, 2006, as clarified by the parties thereto on February 15, 2007, as follows:

a) Hours of operation:

a) Outdoor hours mutually agreed upon in the mediation agreement are: 10:00AM to 4:00 PM on Saturdays and Sundays year round. From June 10 to September 10 the course may also be used on Wednesdays from 10:00AM to 4:00PM. 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. The Homeowners Association is in agreement with the Watts that an outside paintball Game may take place after 4:00PM without a specific request when the players are limited to Dan and Allyson Watts and their two children.

- b) Indoor hours mutually agreed upon by the parties of the mediation hearing; Indoor hours will be 10am to 10pm, seven days a week, with the only exception being Friday, when the hours extend until midnight on a trial basis.
- b) 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.
- c) 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.
- d) 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.
- e) The Watts give assurance that the outdoor course will never be operated without a monitor and that no speedball games will be played outside.
- f) The following understandings of the parties shall govern the agreement:
  - 1) 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 (December 17, 2006).
  - 2) It is the understanding of the parties present during the



mediation agreement that the one year review should stay intact and will include both indoor and outdoor courses. This review should help to prove the willingness of both parties to work together toward a successful outcome for everyone (February 15, 2007).

3) The parties present during the mediation agreement agree there has been no violation of the mediation agreement nor breach of confidentiality. (February 15, 2007).

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. The Watts will install the 20-foot high net called for in the Settlement Agreement

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. In matters covered by any Settlement Agreement this permit is personal to the applicants and shall not run with the land.

- a) 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. The Cedar Hill Homeowners Association shall also be notified. 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 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.

b) The Special Use Permit shall not be transferred for at least one year from December 17, 2006.

22. The Settlement Agreement entered on December 17, 2006, is effective through December 17, 2007.

a) The parties thereto shall contact the Hearing Examiner 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 hearing, the Examiner may revoke, suspend or modify the permit in respect to indoor or outdoor paintball as necessary to achieve compatibility with other uses in the neighborhood.

b) 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.

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

24. 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. Species, quantity, and size of evergreen trees planted may vary from the original specifications, provided they meet or exceed those specifications and provide vegetative sight and sound screening. 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% survival rate.

-end conditions-

