

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

CEDAR HILLS HOMEOWNERS)	
ASSOCIATION,)	PL06-0129
)	
Appellant,)	
)	FINAL ORDER
SKAGIT COUNTY, DAN & ALLYSON)	
WATTS,)	
)	
Respondents.)	
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BACKGROUND

This matter concerns Special Use Permit #PL06-0129, relating to the operation of a paintball facility by Dan and Allyson Watts at 2464 East Blackburn Road. The Hearing Examiner entered an Order on February 28, 2007, which incorporated the provisions of a Settlement Agreement into the Conditions of Approval for the permit. The parties to the Settlement Agreement were the Watts, Rick Hansen, and the Cedar Hills Homeowners Association. The settlement was reached as a result of mediation.

Condition 22 as set forth in Attachment A to the Order stated (in part) the following:

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

a) The parties thereto shall contact the Hearing Examiner 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.

A hearing before the Examiner was held on December 5, 2007, in fulfillment of the above condition.

FINDINGS

1. After a year's operation under the Settlement Agreement there have been no reported violations by the paintball facility. No complaints about the operation have been reported to the County.

2. At the hearing, Pat McLatchy, speaking for the Homeowners reported that they were pleased to report that the Agreement has worked well. He said, "We believe that all games were played according to the wording and the intent of the Agreement. Everyone involved has acted in a neighborly manner."

3. McLatchy noted that the great majority of the paintball games were played indoors. While the large building dominates neighbors' views, the noise level of the indoor games has been "very effectively muffled until noise is no longer an issue," he said.

4. Dan Watts, the facility's operator, agreed that "things went well" during the year. He said that he and his wife have made new friends and that their door is open if there are problems.

5. The Homeowners want to keep the core of the Agreement intact, in particular requiring that meetings of the parties be held each year to discuss the way things are working out. They ask for a minimum of two meetings annually – one in August to discuss and resolve any issues and another in December to discuss and formally renew the Settlement Agreement. However, the Homeowners see no reason for annually bringing the matter back before the Hearing Examiner for review.

CONCLUSIONS

1. The simplest way to carry out the wishes of the parties is simply to modify the Conditions of Approval so that they will keep the essence of the mediated Settlement Agreement in force while eliminating any requirement for annual review by the Examiner.

2. If the meetings among the parties show that the Conditions are not being observed, the matter can be brought to the attention of the County's enforcement personnel. Compliance with permit conditions is a requirement for keeping a permit in good standing. Use of the enforcement process is also a means for getting the case back before the Examiner.

3. In addition, if the Homeowners feel that the Conditions should be changed, they should be able to petition to the County for a modification of the permit. The December meeting could be the occasion for a decision to seek a modification. A decision not to petition for a change would be tantamount to a renewal of the Settlement

Agreement. Because in any given year there may be no impetus for any change, the December meeting can be made optional.

4. Any petition by a party for a permit modification would be brought before the Examiner for his/her decision in the normal course of permit processing by the County. Changes in the particular individuals serving the Homeowners Association will have no effect on the Association's ability to seek a change.

5. The Examiner recognizes that some of the Conditions are effectively obsolete because they have already been accomplished. However, because he lacks an account of all the details of compliance, he is, in the main, keeping prior requirements in effect. There is no harm in retaining a condition that has been complied with.

6. Finally, the Examiner congratulates and commends the parties for the successful way in which their relationship has been pursued, and he urges more of the same in the future.

ORDER

The Conditions of Approval for Special Use Permit #PL06-0129 are modified as set forth in Revised Attachment A. The revised attachment conditions all of the applicable conditions in full.

The permit shall remain in effect as conditioned by Revised Attached A.

After the appeal period, the Examiner's jurisdiction in this matter shall cease unless or until a permit violation proceeding or a permit modification proceeding is initiated.



Wick Dufford, Hearing Examiner

Date of Action: January 8, 2008

Date Transmitted to Parties: January 8, 2008

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. 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.

REVISED 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 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, Stormwater, Sedimentation Control Ordinance, as it relates to increased runoff 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 application shall comply with all other relevant regulations, including Chapters 173-201A 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 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 Marshal requirements.

9. The 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. A mediated Settlement Agreement was entered on December 17, 2006, and clarified by the parties on February 15, 2007. The parties to the Agreement were the Watts, Rick Hansen and the Cedar Hills Homeowner Association. The following provisions of the Settlement Agreement shall be conditions of the permit:

a. Hours of operation: (1) Outdoor hours shall be between 10 a.m. and 4 p.m. on Saturdays and Sundays year around. From June 10 to September 20 the course may also be used on Wednesdays from 10 a.m. to 4 p.m. On 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 Association. The Association is in agreement with the Watts that an outside paintball game may take place after 4 p.m. without a specific request when the players are limited to Dan and Allyson Watts and their two children.

b) Philip Jennewein, Murphy Hektner, Rick Hansen and Daniel Watts will walk the parts 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. Yearly, in mid-August, Allyson Watts will initiate setting up a meeting of the parties to the mediation 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 will be played outside.

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 14.16.810 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. Prior to any transfer of ownership or control of the paintball business, the applicants shall notify Planning and Development Services of the impending transfer.

The Cedar Hills Homeowners Association shall also be notified. The terms of the Settlement Agreement shall be made known to the transferee and the explicit consent of the transferee to perform the undertakings of the Watts under the Agreement shall be obtained prior to the transfer. Any change of use on the property shall be subjected to the normal approval processes of the County.

22. The parties to the Settlement Agreement shall be entitled to call a meeting each December to determine if the permit conditions should be continued or modified. If it is decided that permit modification should be sought, any party to the Settlement Agreement shall have standing to apply, and Planning and Development Services shall process the application.

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 furnish 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 shall be installed and maintained to achieve at least a 90% survival rate.

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