

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

- Appellant:** Concerned Neighbors of Lake Samish
121 Bear Creek Lane
Bellingham, WA 98229
- Counsel: Philip Buri
Buri, Funston & Mumford, PLLC
1601 F Street
Bellingham, WA 98225
- Respondent/Applicant:** Cecelia & Seth Carson
P. O. Box 28434
Bellingham, WA 98228
- Counsel: Seth Woolson/Tim Schermetzler
Chmelik Sitkin & Davis, P.S.
1500 Railroad Avenue
Bellingham, WA 98225
- Case/Type:** PL 16-0292. Appeal of SEPA Threshold Determination (MDNS), issued December 1, 2016; Appeal of Administrative Special Use Permit issued on February 7, 2017
- Proposal:** To build and operate a five bedroom bed & breakfast and to host temporary events (mainly weddings) on three outdoor sites with receptions to be held in an enclosed space. Included in the plans are a single-family residence and accessory dwelling unit. The project is phased over 4-5 years,
- Hearing:** The Hearing Examiner conducted a contested appeal hearing on March 22 and March 29, 2017.
- Decision:** The MDNS is affirmed. The Special Use Permit is affirmed, subject to conditions, as modified.
- Date:** April 25, 2017.
- Reconsideration/Appeal:** Reconsideration may be requested by filing with PDS within 10 days of this decision. Appeal of the Special Use Permit is to the Board of County Commissioners by filing a written notice with the Clerk of the Board within 14 days of this decision or decision on reconsideration, if applicable. The decision on the MDNS is the final County determination.

CONCERNED NEIGHBORS)
OF LAKE SAMISH,)
))
Appellants,)
))
v.)
))
SKAGIT COUNTY and)
CECELIA & SETH CARSON)
))
Respondents.)
_____)

PL 16-0292

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND DECISION**

This matter, the appeal of a SEPA threshold determination (MDNS) and an administrative Special Use Permit came on for hearing before the Hearing Examiner on March 22 and March 29, 2017, in the Skagit County Administrative Building in Mount Vernon, Washington.

The Appellants were represented by Philip Buri, Attorney at Law. The Respondents (Applicants) were represented by Seth Woolson and Tim Schermetzler, Attorneys at Law. The County was represented by Julie Nichols, Deputy Prosecuting Attorney, and Annie Matsumoto-Grah, Associate Planner.

Exhibits were admitted, testimony was taken, argument was given. On the record made, the following findings, conclusions and decision are entered:

FINDINGS OF FACT

1. Cecelia and Seth Carson seek to build and operate a temporary events facility, mainly aimed at providing a rustic venue for weddings, on a 20-acre property below the south end of Lake Samish just inside Skagit County
2. Under their proposal, outdoor weddings would be held on one of three relatively natural open areas.
3. Project-related structures on the property would include an enclosed wedding reception venue and a five-bedroom bed and breakfast facility. On-site parking for event attendees and B & B guests would be provided.
4. Contemporaneous with this commercial project would be the construction of an accessory dwelling unit and single family home to be used successively as the residence for the Carsons and their children. This residential use is the primary use of their property.
5. The site is within Skagit County--a quarter mile south of Lake Samish and about a half mile west of Interstate 5. The property borders two public roads –Lake Samish Road to the west

and Nulle Road to the north. Friday Creek runs east and south of the site. Bear Creek, a tributary to Friday Creek, runs through the south end of the site.

6. Currently the subject property is undeveloped. The northeast four acres and about one acre in the southwest have been cleared and contain grass and small shrubs. The rest of the property is wooded. The topography of the site is slightly hilly with a low point at the center. There are no structures on site at present.

7. The subject property contains Category III wetlands and Type 2, 3, and 4 streams, all of which, with their associated buffers, have been placed in a Protected Critical Area (PCA) Easement. No development is contemplated within the PCA except for wood-chip pedestrian access trails. No Natural Resource Lands will be affected.

8. In Skagit County parcels in the vicinity are zoned Rural Reserve (RRv) and average two to ten acres in size. North of Nulle Road, properties are in Whatcom County. These are zoned R5A and R2A, averaging two to five acres. Nearby parcels to the north, south and west contain single family residences. Most of these are to the north in Whatcom County.

9. There are, however, non-residential uses in the vicinity. Lutherwood Camp and Retreat Center is located on the northwest end of Lake Samish and hosts events year around. The Samish Water District's office and retention ponds occupy the 27 acres to the east of the project site. Whatcom County maintains Lake Samish County Park and recreational boating activity by the public is carried out on the lake.

10. As depicted on the project site plan, approximately 12-13 acres of the 20 acre property will be retained in some form of open space. Most of the proposed site development will be confined to the northerly part of the parcel. The venue for wedding receptions is in a low spot in this area more than 200 feet from the nearest road and twice that distance from the nearest neighboring house. One of the outdoor ceremony venues is adjacent to the reception facility. The nearest existing off-site residential development is more southerly and to the west.

11. At the outset, the plan is to hold wedding receptions in a large tent. The ultimate objective is for wedding receptions to be held under a permanent covered area, large enough accommodate up to 150 guests. As contemplated by the noise study, this structure is assumed to be a building with walls and a patio. On-site catering will be offered with a kitchen located inside an outbuilding.

12. Provision for parking for the temporary events will be made in a demarcated area at the north end of the property near Nulle Road. Any overflow can readily be accommodated on the site. The proposed parking lot is only about a half mile from an Interstate 5 exit. The majority of the traffic associated with the events will be confined to this short segment.

13. The projected bed and breakfast and the Carson residence will also be in the northerly part of the property. As planned, the B & B will be owner-operated and managed. It will not exceed the five bedroom maximum for such a use. Parking for the B&B will be off of Lake Samish Road, next to the building.

14. The two additional outdoor ceremony venues are to be located in the central-south portion of the property. One is more or less buried in the woods in a low lying clearing surrounded by trees. The other is adjacent to and downslope from a residential property –the Gephard’s.

15. Under the plans, the project is contemplated to be developed in four phases over a period of five years.

16. The initial application was for a Developed Campground and Temporary events venue. This was revised on October 10, 2016, to a five bedroom Bed and Breakfast and Temporary events venue. Under Skagit County’s development code, the revised proposal was reviewed as an Administrative Special Use, with permitting decisions being made by County staff.

17. The County issued a Mitigated Determination of Non-Significance (MDNS) for the project on December 1, 2016, under the State Environmental Policy Act. This was a so-called threshold determination, meaning that no environmental impact statement was required.

18. The MDNS contained the following conditions:

1. The applicant shall submit an Environmental Noise Analysis to verify compliance with Skagit County noise regulations found in Skagit County Code (SCC) 9.05 Noise control, SCC 14.16.840 Zoning Performance Standards and Chapter 173-60 WAC Maximum Environmental Noise Levels. This analysis shall be performed by a qualified acoustical engineer and focus on possible noise impacts produced by the Temporary Events held on site.
2. The applicant shall maintain all temporary erosion/sedimentation control measures in accordance with the Skagit County Stormwater Management Ordinance. Said measures shall remain in all phases of the project.
3. The applicant shall comply with Northwest Clean Air Agency requirements.
4. The applicant shall comply with the provisions of Chapter 14.32 of the Skagit County Code, the Skagit County Stormwater Management Ordinance, as it relates to increased runoff resulting from additional impervious surfaces.
5. The applicant shall comply with all Fire Code Standards.
6. The applicant shall comply with all relevant provisions of 14.24 (Skagit County Critical Areas Ordinance) of the Skagit County Code.
7. The applicant shall obtain and comply with all necessary state and federal authorizations prior to beginning any ground disturbing activities or vegetation removal in conjunction with this proposed project.
8. A Construction, or Industrial, Stormwater General Permit (NPDES) may be required by the Department of Ecology (WSDOE) for this project. Contact the WSDOE Bellingham Field Office at (360) 715-5200 to determine if an NPDES permit is required.

19. On February 7 2017, the County approved the underlying Administrative Special Use Permit application. This approval was made subject to 40 permit conditions. Included, among others, were the following:

16. Approved septic system permit(s) will be required prior to the submittal of any building permits including plumbing. The approved septic systems must be designed to accommodate the proposed uses.

17. No more than 24 Temporary Events may be held on site per calendar year, per SCC 14.16.900(2)(h), each event may run no longer than 3 days in length.

18. Temporary events hold on site shall have a maximum event size of 150 guests

19. Parking for all events shall be fully contained on the subject property and shall not include the use of any road right-of-way, per SCC 14.16.900(h) & (i).

20. All lighting shall be directed away from neighboring residences or businesses, per SCC 14.16.900(h) & (i).

21. Applicant shall comply with WAC 173-60 and SCC 14.16.840 for noise, vibration and light conditions.

22. All Mitigation and Practices outlined in pages 8-10 of the SSC Acoustics, LLP Environmental Noise Analysis Report dated December 9, 2016 must be practiced on site during events and implemented into project design.

23. The applicant or a designated staff member shall be present on site at all times of the event to monitor noise throughout the event utilizing a hand held noise meter (dosimeter).

24. Applicant must provide all existing property owners within 300 feet of the project site a 24 hour contact phone number for a staff member monitoring the events which neighboring property owners can call to report noise complaints during temporary events held on site.

31, The applicant shall provide parking attendees and traffic flaggers on site or another approved location outside of the road right-of-way and within 200 feet of the subject property to assist in parking vehicles and directing traffic during temporary events.

20. Special Use Permits are a mechanism for authorizing certain listed uses that are not allowed outright but which if appropriately conditioned will not “adversely affect or prevent those uses normally allowed within the respective district.” General standards of Special Use approval are set forth at SCC 14.16.900((1)(b)(v), as follows:

(A) The proposed use will be compatible with existing and planned land use and comply with the Comprehensive Plan,

(B) The proposed use complies with the Skagit County Code.

(C) The proposed use will not create undue noise, odor, heat, vibration, air and water pollution impacts on surrounding existing, or potential dwelling units, based on the performance standards of SCC 14.16.840.

(D) The proposed use will not generate intrusions on privacy of surrounding uses.

(E) The proposed use will not cause potential adverse effects on the general public health, safety and welfare.

- (F) [inapplicable standard for special uses in Natural Resource Lands]
- (G) The proposed use is not in conflict with the health and safety of the community.
- (H) The proposed use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding areas, or conditions can be established to mitigate adverse impacts on such facilities.
- (I) The proposed use will maintain the character, landscape and lifestyle of the rural area...

21. For some particular uses, additional criteria are provided for Special Use approval. These include Bed and Breakfasts and Temporary Events, under SCC 14.16.900(2)(c) and (h), as follows:

- (c) Bed and Breakfast. Bed and breakfast special use permits are subject to the following requirements:
 - (i) They are owner-occupied and managed.
 - (ii) Parking is on-site and a minimum of 10 feet away from neighboring residences.
 - (iii) All lighting is directed away from neighboring residences.
 - (iv) It is demonstrated that the impacts will be no more obtrusive than a residence.
 - (v) Five bedrooms or less are available for guest use.

- (h) Temporary Events. Special use permits for temporary events are also subject to the following criteria:
 - (i) Events may occur on no more than 24 calendar days per year.
 - (ii) Parking for all events shall be fully contained on the subject property and shall not include the use of any road right-of-way.
 - (iii) Does not create a detrimental level of electrical interference, line voltage fluctuation, noise, vibration, smoke, dust, odors, heat, glare, traffic or other environmental impacts on the surrounding area.

22. In this case, both the MDNS and the permit approval decisions were timely appealed to the Hearing Examiner by Concerned Neighbors of Lake Samish. The issues raised in the appeals included: 1) conflicts with relevant Comprehensive Plan policies, 2) traffic impacts, 3) noise impacts, 4) light impacts, 5) critical areas impacts, 5) water quality-impacts and 6) alcohol consumption. In addition to this list of specifics, the overriding concern was the perceived negative impact on the character and lifestyle of the surrounding neighborhood.

23. Comprehensive Plan. No compelling conflicts with Comprehensive Plan policies were advanced at hearing. It was pointed out by the County that adopted regulations control over general planning statements and that Temporary Events and Bed and Breakfasts are permitted in the Rural Reserve designation, so long as the criteria for Special Use Permit approval are met.

24. The Rural Reserve district is designed as a transitional area between resource lands and non-resource land where limited employment opportunities may be allowed in low-density developments that preserve open space. SCC 14.16.320(1). The proposed development is not shown to be inconsistent with the purpose of the zone.

25. Whatcom County Planning and Development Services did not submit any comments on the subject project at any point in the review process.

26. Traffic. The Appellants emphasized that Nulle and Lake Samish Roads are narrow with no shoulders or sidewalks. They noted that biking events are periodically conducted in the area in the summer, adding to the risk of traffic-related accidents.

27. The applicants commissioned a traffic study which was performed by Gibson Traffic Consultants, Inc. and presented January 12, 2017. Looking at conditions at full development, this study evaluated weekday trip generation and concluded that the proposed use would result in only 59 daily trips and five peak-hour trips during weekdays. This analysis, however, did not factor in traffic during “events.” An additional memorandum, dated February 3, 2017, addressed anticipated trip generation for a wedding with 100 guests and an average vehicle occupancy of 2.2. Including guests and workers associated with events, the analysis came up with a total of 108 event trips, half inbound and half outbound. These results were reviewed by Skagit County Public Works and the conclusion reached was that the trips generated by the B&B and the new home would be insignificant and that wedding events would “not come close to causing congestion or a Level of Service below standards.” The County’s reviewer pointed out that two-lane roadways typically can handle 1200-1400 vehicle per hour before triggering a Level of Service issue.

28. The traffic consultants also looked at “crash data” and found that between the site and I-5 over the most recent 5.75 years, two crashes had occurred along Nulle Road, both of which were one-vehicle collisions due to vehicles running off the road. They concluded that the proposed development will not create an unsafe condition or contribute to an existing unsafe condition.

28. As to biking events which are periodically held around Lake Samish, no information was presented about related accidents. Furthermore it was pointed out that such events are themselves accompanied by traffic safety measures imposed by Whatcom County. The conditions of approval proposed by Skagit County for the subject development addressed the congestion issue by calling for attendants at the parking area and the use of traffic flaggers during events. No event parking will be allowed off of the Carsons’ property.

29. There was no professional traffic analysis countering the conclusions of the applicants’ consultant. The Examiner finds that probable traffic impacts from the project were not proven to present a significant adverse impact on the environment. As the proposal is conditioned, event-related traffic was not shown to create a likelihood of serious additional safety risks.

30. Noise Impacts. The most prominent concern of commenters on the proposed development was noise. Residents of the bucolic setting nearby fear that amplified sound from the wedding receptions will be intrusive and inconsistent with the relative quiet they have grown accustomed to.

31. On December 9, 2016, the applicants submitted a document entitled “Environmental Noise Analysis for the Carson Creek Estate,” prepared by SSA Acoustics, LLP, of Seattle. The report concluded that noise from the wedding events will likely not exceed the maximum daytime noise levels established by applicable regulations at receiving properties in the vicinity. The report recommended ceasing all amplified or live music after 10:00 p.m. and proposed a number of other mitigation practices. All of these recommendations were imposed by the County as conditions of approval.

32. Skagit County added two extra conditions regarding noise monitoring during temporary events: (1) use of hand held noise meters throughout the event, (2) providing existing neighboring property owners within 300 feet of the project site with contact information for the applicant or staff members for use 24 hours a day to respond to noise complaints.

33. Appellants presented a noise expert who largely agreed with the conclusions of the Applicants’ noise study. However, he took strong exception to the “300 foot” notification radius. He recommended that contact information for noise complaints be provided to all residents within 2500 feet of the project site. He also noted that though applicable noise regulations may be met, noise can still be perceived as intrusive and irritating. He said that vegetative screening is unlikely to have much effect in attenuating sound.

34. Although his testimony was that noise standards would probably not be exceeded even at the neighboring Gebhard residence, he recommended that amplified voice and amplified music not be permitted at the ceremony site adjacent to the Gebhard’s.

35. Considering the physical features of the site and surrounding area, the distances involved and the controls being proposed, the Examiner is not convinced that noise from the site at receiving residential properties will be more than a minor intrusion, except at the Gebhard’s.

36. Light. No evidence was presented on the possibility of off-site light intrusion. Nevertheless, the County inserted a condition reflecting the County Code requirement that all lighting be directed away from neighboring residences or businesses.

37. Critical areas. The Appellants contended that the proposed use threatens multiple wetlands. As noted, the project is confined to areas outside of the delineated wetlands and buffers and these areas have been placed within a Protected Critical Areas (PCA) easement where almost all development is prohibited.

38. The Applicants have agreed to use signs and well-marked trails to ensure that guests do not disturb wetland areas. Where wood-chip footpaths intrude on wetland buffers, they are allowed as “low impact uses” which do not detract from buffer integrity under SCC 14.24.250(6)(b).

39. Water Quality Impacts. The Appellants raised fears of possible adverse water quality impacts on several fronts. They pointed out that the positions of the septic drainfields for the residence and B&B have not been established. However, the record shows that the required analysis showing appropriate soils for septic development has been made. Once representative soils have been identified, the County's policy is to defer precise drainfield location to the building permit stage. Nothing in the record demonstrates that this is a flawed policy or that its application here presents any discernible risk.

40. No drainfield will be needed for the event center because the sanitary facilities used there will be port-a-potties.

41. Appellants also contended that project facilities will be placed in a protected aquifer recharge area. This does not matter in this case because the project will withdraw no water from such an area. Wedding guests will be drinking bottled water. The potable water for other facilities, such as the B&B, will be from a public source located in a different watershed. The septic systems within the subject watershed will simply add to the existing ground water supply.

42. Appellants faulted the proposal here because no storm water management plan has been prepared. However, the project is, at this stage, to a large degree conceptual. Refined calculations of impervious surface await more detailed designs. The County has included a condition requiring that the project address stormwater at each development phase at the time of building permit or fill and grade permit. Should the developed area exceed County thresholds, a stormwater management plan will be required to demonstrate compliance with standards. By these provisions, the Examiner finds that this aspect of project impact has been covered. There is nothing in the record to suggest that stormwater runoff cannot be adequately controlled in this case.

43. Alcohol Consumption. The use of alcohol is governed by State liquor service laws. Its use at wedding receptions quite naturally raises fears that guests will overdrink and then cause accidents on the road after leaving the premises. This is a legitimate fear.

44. The Applicants seek to reduce the possibility of overconsumption by ensuring that no hard liquor will be served or allowed at any event. They stated, "Controlled single serving (approximately four ounces) champagne toasts will be permitted at weddings." Wine and beer will apparently be permitted at receptions. In order to provide some protection against over-indulgence, the Applicants will allow only licensed bartenders hired by the event client to serve alcohol. Any person discovered to have alcohol not served by a bartender will be escorted off the property by a designated driver. These measures, coupled with the limitation that music will cease at 10 p.m. should provide a degree of protection.

45. While the Examiner understands that serving alcohol creates a risk, he does not believe that its regulation at weddings is a land use issue over which he has jurisdiction.

46. Character of Area. The residents of the Lake Samish neighborhood highly value its relatively unspoiled rural character. They fear that the proposed development will seriously

undermine this character. They argued that the last of the Special Use approval criteria should itself be enough to support denial of this proposal. This criterion requires that “the proposed use will maintain the character, landscape and lifestyle of the rural area.”

47. Pointing out that there are some other non-residential uses in the vicinity, the project proponents are equally persuaded that their proposal will fit into the neighborhood and that the area’s “character, landscape and lifestyle” will not be substantially altered.

48. This determination involves a subjective judgment. The County land use Staff has concluded that, as conditioned, the proposed use will meet the quantifiable standards of the Code and that, under all the circumstances, there is no compelling rationale for turning it down.

49. There is no significant opposition to the B& B. The focus of concern is the wedding venue. The temporary events proposed are, indeed, a new use for the neighborhood. However, after considering the entire record, the Hearing Examiner concludes that the environmental impact will not be significant and that, if operated as conditioned, the wedding business (along with the B&B) can be conducted without “undue” disruption of the everyday lives of persons living in the vicinity. In sum, it was not clearly wrong to conclude that the character, landscape and lifestyle of the area will not be materially altered.

50. The only exception to the above statement is the situation of the Gebhards. The proposal would locate some of the marriage events immediately adjacent to their yard and house. Weddings in that particular venue would have a high potential for intrusion on their privacy. See SCC 14.16.900(1)(b)(v)(D). In testimony, the Applicant stated that he thought most of the ceremonies would probably take place at the venue next to the wedding reception building. The venue next to the Gebhard’s, while desired, is apparently not absolutely essential to the proposed business. Accordingly, the Examiner concludes that this venue should be eliminated.

51. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over this appeal proceeding. SCC 14.06.110(7), (11).

2. The MDNS was proper. As conditioned thereby, the proposed use does not have a reasonable likelihood of more than a moderate adverse impact on environmental quality. WAC 197-11-794.

3. By and large, the County’s conditions of approval for both the MDNS and the permit decision are not clearly erroneous and should be retained. The Hearing Examiner concludes that the following conditions of approval for the Special Use should be altered as stated below:

17. Temporary Events may occur on no more than 24 calendar days per year. An event is a single cultural or social gathering and does not include incidental set-up and take-down of items used in staging the event.

24. Applicant must provide all existing property owners within 2500 feet of the project site a 24 hour contact phone number for a staff member monitoring the events which neighboring property owners can call to report noise complaints during temporary events held on site.

4. In addition, the Examiner hereby adds conditions of approval, as follows:

41. The proposed event venue adjacent to the Gebhard property and residence shall not be used for temporary events under this permit.

42. Whenever a temporary event is proposed to be scheduled, the Applicants shall coordinate with Whatcom County to determine if any public event using the adjacent roadways, such as a bike rally, is planned for the same day.

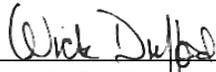
5. As amended by the above changes, the County's Findings, Conclusions and Decision for the Administrative Special Use Permit should be affirmed.

6. Any finding herein which may be deemed a conclusion is hereby adopted as such.

DECISION

Administrative Use Permit PL 16-0292, dated February 7, 2017, is **MODIFIED** to incorporate the changes and additions set forth in Conclusions 3 and 4 above. As modified said permit and its attendant Mitigated Determination of Non-Significance, dated December 1, 2016, are **AFFIRMED**.

SO ORDERED, this 25th day of April, 2017.



Wick Dufford, Hearing Examiner

Transmitted to the Parties, April 25, 2017

See Notice of Decision, page 1 for appeal information.

The entire decision can be viewed at: www.skagitcounty.net/hearingexaminer