

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant: Kimberly Johnson
13913 Avon Allen Road
Mount Vernon, WA 98273

File No: PL06-0805

Request: Special Use Permit (Home Based Business 2)

Location: 13913 Avon Allen Road, Lots 2, 3, &6, Block 13,
Skalings Addition to Town of Avon, within a
portion of the SW1/4SW1/4 Sec. 12, T34N,
R3E, W.M. Parcel # P70483.

Land Use Designation: Rural Intermediate

Summary of Proposal: To use 0.5 acres of land for a home based business
involving a dog daycare operation during the
week and use of an outdoor garden as a
photography location on weekends. The request
revises an earlier application for a display garden
with outdoor events, including wedding receptions.

Public Hearing: After reviewing the report of Planning and
Development Services, the Hearing Examiner
conducted a public hearing on March 14, 2007.

Decision: The application is approved in part and denied
in part.

FINDINGS OF FACT

1. Kimberly Johnson (applicant) seeks approval of a Home Based Business at her residential property on Avon Allen Road. The activities would involve a dog daycare business conducted during the work week and an outdoor photography location open during the weekends.

2. The location is a 0.5 acre parcel located at 13913 Avon Allen Road. The property is Lots 2, 3, & 6, Block 13, Skalings Addition to the Town of Avon, within a portion of the SW1/4SW1/4 Sec. 12, T34N, R3E, W.M. The zoning is Rural Intermediate. The Parcel Number is P70483. The parcel is substantially smaller than the 2.5-acre minimum lot size for the zone.

3. The property is situated on the east side of Avon Allen Road, north of its intersection with Bennett Road. The lot measures 185 feet along the road, 180 feet along the east lot line, 140 feet along the south lot line and 185 feet along the north lot line. There is a single family residence in the northwest corner of the property, where the applicant lives. Behind the house is a shop building measuring 20' by 24'. In the southeast corner of the property is a small barn. The property is served by an on-site septic system and Public Utility District water.

4. The property is located in an AO (Depth 3) Flood Hazard Zone, per FIRM Map 530151 0250, dated January 3, 1985. It is located within 500 feet of designated natural resource land.

5. There are residences immediately across Avon Allen Road from the subject property. There is a home directly behind the property to the east that is accessed by an easement along the south side of the applicant's property. There are homes to the immediate north and south. At the corner of Avon Allen and Bennett, about half a block south, are a couple of commercial establishments, holdovers from the distant past when an actual town of Avon was contemplated. The near area has homes, fields, a church and a scattering of other businesses. However, in the immediate neighborhood the predominant use is residential.

6. The subject property has been developed as a garden area with gazebos, ponds, rockeries, trees, and flower beds. These features are scattered across the lot between the house and barn.

7. The proposed dog daycare business would take over the area in the northerly portion of the lot east of the residence. The operation would comprise: (1) an outdoor play area that is effectively around 2,500 square feet in size when the several trees that would remain are taken into account, and (2) an existing 20' by 24' shed (480 square feet) that would be used to house the dogs for resting or when the weather requires that they be indoors.

8. The plan is to enclose the play area and the shop within a five-foot-high chain link fence and cover the ground with eight inches of sawdust. There would be a large mound of dirt with dog bones and chew toys buried in it. Also a small amount of dog agility equipment is planned for this area. The fence would have one foot of inverted fencing at the top to keep the dogs from jumping out. The bottom of the fence would be buried in a one-foot deep trench to thwart the dogs from digging out. The entry would be double gated to prevent escapes.

9. The applicant stated that a separate “kennel” would be provided for each dog. Whether these enclosures would be in the shop or outside was not made clear.

10. The shop has a wooden floor. Rubber mats are proposed to be added. Also, more windows are proposed. If permitted, the applicant states that she would install a wood heater in the shop. There is an adjoining enclosed area on the east side of the shop building that would be used for any dogs requiring a quiet, safe place to recuperate from minor surgeries or injuries.

11. The proposal is to run the daycare center on weekdays only, from 7 a.m. to 6 p.m. No overnight or weekend boarding would be allowed. Up to eight dogs would be allowed at the center on any given day. The proposal is to keep five spots available for regular customers and to reserve three for “drop-ins.” The “drop-ins” would be accepted by reservation only. The applicant keeps two dogs of her own on the premises, meaning that a total of 10 dogs would be at the site at a time.

12. Solid waste from the dogs would be handled by manual pickup, double bagging, sealing and storing in receptacles with tight fitting lids. Waste Management would pick up the wastes weekly. Urine would be absorbed by the sawdust or would be contained by the rubber mats. The mats would be sprayed and cleaned daily. The sawdust would be removed periodically.

13. A solid wood fence would be installed around the entire property and a dense evergreen border would be planted along the exterior fence.

14. The applicant is convinced that if the dogs were kept active and entertained there would be a minimal amount of barking. She also asserts that the landscaping around the dog enclosure would provide a sound buffer. Any dog that barks consistently for over two minutes would be taken indoors. If a dog’s barking could not be controlled by other means, sonic devices or electronic collars would be tried. If these failed, the dog would no longer be allowed to attend the daycare facility.

15. Only dogs that have health records and are up to date on shots and vaccinations would be allowed in. An effort would be made to identify aggressive dogs in advance and prevent their attendance.

16. Dog owners would be encouraged to be on-time in picking their dogs up before 6:00 p.m. Owners would be charged extra for picking up their dogs late and, if the lateness became chronic, their dogs would no longer be accepted at the facility. All drop offs and pick ups would be off of the public right-of-way in the parking area.

17. There would be no outside storage of any dog food, cleaning material or any other daycare supplies.

18. The applicant would be the sole full-time employee of the daycare operation. She plans to make arrangements for an on-call dog watcher to fill in on a temporary basis when the applicant must be gone briefly or takes some days off.

19. The applicant proposes to provide parking on the west side of the property south of the house. There would be six parking stalls, one of them being a handicapped stall. The area involved is approximately 71 feet long and 55 feet deep, large enough to permit turning cars around so they do not have to be backed out into the street. The ingress and egress would be through the existing driveway for the residence. The parking area would be fenced.

20. The photography sessions would be limited to the weekends from April through October. The garden portion of the property would be used. The business would just be one of allowing photographers and subjects to use the property as a backdrop. The applicant would be the only employee. There would be a maximum of two hours in any one photo session. The proposal is to limit the sessions to two weddings or family photo sessions per month. The maximum number of people at any session, including the photographer, would be 15. High school senior photos would be limited to a maximum of four people in any session.

21. All photo sessions would take place between 10:00 a.m. and 5:00 p.m. No music would be allowed. No food would be allowed. No dressing area would be provided. No public restroom facilities would be available. Attendees would have to arrive in cars that use the designated parking area. No parking would be allowed along the street.

22. Proper notice was given of the application and the hearing. Thirteen comment letters were received. At the hearing, in addition to testimony from the County and the applicant, five neighbors were heard. All five opposed the proposal.

23. The objections expressed covered a wide array of concerns. Principal among there were assertions that (1) the subject property is too small to support the daycare business; (2) the business will detract from the rural residential character of the neighborhood; (3) it will not be possible to avoid exterior indications of the businesses; (4) it is likely that noise (barking) and odor will impose levels of environmental impact beyond that which is common in a residential area; (5) the proposed facilities and methods of operation are inadequate to assure that water pollution will not occur from

runoff; (6) based on prior experience, there is little reason for confidence that the applicant will strictly adhere to an extended list of conditions.

24. Environmental review was conducted pursuant to the State Environmental Policy Act (SEPA). A Mitigated Determination of Non-Significance (MDNS) was issued on December 21, 2006. The MDNS was not appealed. The conditions imposed in the MDNS were as follows:

1. Solid waste shall be at a minimum double bagged and placed in metal receptacles on premise to be disposed of on a weekly schedule either picked up by Waste Management, Inc., another solid waste handler, or taken to the dump.
2. Any excessive barking dog(s) shall be kept inside the building designed for the business.

25. The proposal does involve concentrating a number of dogs in a relatively small area. The indoor space available is particularly limited. In this part of the world, where inclement weather can last months, the practicality of confining the dogs within the shed is questionable. The structure was not designed for the kind of waste management challenges that would follow. In addition, behavioral control within the shed would likely prove difficult. Similarly, during the wet months, the small outdoor play area would inevitably present maintenance and waste management challenges. Odor problems, and run-off contamination are a possibility. For one person to perform, continuously and effectively, all of the work involved in this operation would be a monumental task – perhaps finally an exhausting one.

26. Though some businesses are located in the vicinity, the immediate surroundings are pre-eminently residential. The location of a home-based business in such a setting is supposed to be essentially invisible. In terms of activity and appearance, the residence should seem like any other home. Because of this, in most cases, authorized home-based businesses are activities confined within the residence or in an outbuilding – unseen from the outside. This case is rendered difficult by the out-of-doors feature of both proposed business activities.

27. The proposed fencing and landscaping would eventually screen all exterior indication of the dog daycare activities on the property. However, during the interim while the screening is growing up or being built, it is likely that certain of the goings-on in the day care business would be visible from the outside. Of course, the entry and exit of cars would always be visible, but the level of traffic activity would be modest, at most eight cars entering and leaving twice a day. This is a negligible addition to the total traffic on the busy Avon Allen Road.

28. But, in addition to visual appearances, noise can constitute an exterior indication of a business. The Hearing Examiner is not convinced that noise from the concentration of dogs can successfully be controlled so as to conform with normal residential noise levels. The plantings will not mask noise. The shop is a wooden building, not constructed with sound-proofing in mind. There is little space for segregating problem dogs. That such dogs could be effectively isolated and kept quiet within the limited facilities available was not demonstrated.

29. Further, there is no guarantee that ultimate solutions to problem barking, such as electronic collars, would be effective or practical. And, in any event, all of the proposals for noise control are reactive. The barking occurs first and then the solution is applied. The likely overall result would likely be more noise and disruption than is usual in a residential setting.

30. Certainly it is possible that over time a group of dogs would become accustomed to each other and to the surroundings, so that barking would be rare. However, the plan is for the continuous introduction of “drop-in” dogs, meaning that there would be strangers to the mix daily. Further, it is not clear how aggressive dogs among the “drop-ins” would be pre-screened effectively.

31. By contrast, the photo-session business does not appear to raise significant questions of suitability for the setting. The garden involved is, indeed, very attractive. The photographing of modestly-sized parties of persons would be quiet and basically non-intrusive. Before screening became adequate, some of the shoots might be partially visible, but the activity would be no more intrusive than would an ordinary home resident taking pictures of his family in the yard. Eventually, the activities, including the parking, would cease to be visible at all from the outside. Also, the traffic concerns flowing from the photo-session concept would be minor. The proposed parking lot could accommodate the clientele if limits are imposed.

32. This application is impossible to evaluate without consideration of the context of relationships in the neighborhood. In some cases there has been a serious breakdown in civility. Thus, the situation is one in which all aspects of any business by the applicant must work perfectly in order to avoid ongoing complaints. For example, the neighbors across the street worry about headlights shining into their living room. Because this could occur during pet pickups during the winter, the applicant felt obliged to come up with a program, noted above, to control dog care traffic past 6:00 p.m. Such proposals notwithstanding, the mere establishment of a closing time appears to be recipe for new rounds of videotaping and constant friction.

33. In a prior permit proceeding involving an after-the-fact permit application by the applicant, the County Commissioners overturned the Hearing Examiner’s approval of a display garden on her property, involving seminars and wedding receptions. (See Resolution #R20060098, PL05-0065.) In part based on evidence of actions at prior unpermitted events, the Commissioners concluded that the activities proposed went

beyond the definition of “display garden” and failed to comply with the residential character requirements for a home-based business.

34. Taking note of that previous process, and considering what the present record shows of subsequent events, it must be said that the behavior of the applicant, over time, has not provided a basis for confidence in her compliance with a detailed list of conditions. Given the extended saga of conflict between the applicant and some neighbors, the institution of the dog care business would inevitably prove to be a test of the County’s enforcement capabilities.

35. All things considered, the Examiner finds that the dog daycare business is more likely than not to prove incompatible with the existing dominant residential land use in the vicinity. The photo-session business, on the other had, probably can be conducted on the premises without undue disruption of the neighborhood.

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

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the persons and the subject matter of this proceeding.

2. The purpose of the Rural Intermediate district is “to provide and protect land for residential living in a rural atmosphere, taking priority over resource land uses.” SCC 14.16.300(1). The allowance of uses in the zone must be evaluated in light of this overall purpose. The protection of residential living in a rural atmosphere includes protection of the quality of the residential experience.

3. Both “Kennels” and “Home Based Business 2” are allowed in the Rural Intermediate zone by Hearing Examiner Special Use Permit. SCC 14.16.300(4)(m) and (p).

4. SCC 14.04.020 defines “kennel” as “a place where four or more dogs and/or cats are temporarily boarded for compensation and may be bred for compensation . . .” “Home Based Businesses” are defined as “home occupations that remain incidental to the use of a residence for general dwelling purposes and are compatible with rural character.” For permit application purposes, the dog daycare operation can fit within both definitions.

5. There are particular criteria for home based businesses that must be met in addition to the general criteria for Special Use Permits. An enterprise specifically listed as a type of special use (e.g., a kennel) should not also have to qualify as a home based business.

6. In this case, however, the staff review has evaluated compliance of the application with the home based business criteria as well as with the general special use criteria. This does not appear to reflect a determination by staff that the dog care proposal goes beyond the definition of “kennel.” It appears, rather, a response to the Commissioners’ prior decision concluding that the home-based business criteria should be met in a proposal for use of this property.

7. In any event, whether the dog care portion of the proposal is for a “home based business” or for a “kennel” is irrelevant to the outcome here. The Examiner concludes that the project does not satisfy the applicable criteria for either one.

8. SCC 14.16.900(3)(e) sets for particular criteria for a Home Based Business 2 Permit, as follows:

- (i). Is carried out by a member or members of a family residing in the dwelling and may include up to three (3) additional employees;
- (ii). Is clearly incidental and secondary to the use of the property for dwelling purposes;
- (iii). The business activity may be conducted in other than the dwelling;
- (iv). Has no outside storage nor other exterior indication of the home occupation or variation from the residential character of the property with the exception of one (1) sign not to exceed four (4) square feet, provide such sign shall not be illuminated;
- (v). Does not create a level of electrical interference, line voltage fluctuation, noise, vibration, smoke, dust, odors, heat, glare, traffic and other environmental impacts beyond that which is common to a residential area;
- (vi). Does not create a level of parking demand beyond that which is normal to a residential area;
- (vii). May have clients come to the site;

9. The general criteria for Special Use Permit approval are set forth at SC14.16.900(2)(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) Potential effects regarding the general public health, safety, and general welfare.

(F) For special uses in ... Natural Resource Lands ..., the impacts on long-term natural resource management and production will be minimized.

(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 and services and will not adversely affect public services to the surrounding areas, or conditions can be established to mitigate adverse impacts on such facilities.

10. If the dog care business is viewed as a home based business, the Examiner concludes that it was not proven that the standard quoted in SCC 14.16.900(3)(e)(v) above would be met.

11. If the dog care business is viewed as a kennel, the Examiner concludes that it was not proven that the standards quoted in SCC 16.900(2)(b)(v)(A) and (C) above would be met.

12. The key conclusion is about compatibility. Compatibility is a standard that requires consideration of context and, where available, of experience. After all is said, the Examiner's conviction is that the dog daycare business proposed is the wrong thing for this particular property.

13. The photo-session business is clearly a type of activity that fits under the "home based business" rubric. It meets the criteria of both SCC 14.16.900(2) and (3). The Examiner concludes that neither undue environmental impacts nor incompatibility with existing land uses are likely to result from the conduct of this activity in the applicant's garden. Indeed, the Examiner's view is that the photo-session operation could occur during the week as well as on weekends during the good weather and still remain consistent with applicable standards. The conditions below reflect this conclusion.

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

DECISION

The proposal for a dog daycare business is denied.

The application for use of the property as an outdoor photography location is approved, subject to the conditions set forth below:

(1) The applicant shall obtain all other applicable permits, including a grading permit if needed for construction of the parking area and widening of the driveway,

(2) The parking area shall be designed so as to avoid any need for backing onto Avon Allen Road.

(3) The parking area must be completed prior to the start of business. Parking Option B shall be used. At least five normal parking stalls and a handicapped stall shall be provided. Ingress and egress shall be via the applicant's existing driveway.

(4) All parking for the business shall be in the parking lot. No parking along the right-of-way of Avon Allen Road shall be allowed.

(5) The applicant shall comply with SCC 14.16.820 (signs).

(6) The use of the garden area for photo-sessions shall be limited to the period from April through October.

(7) Photo sessions shall be between the hours of 10:00 a.m. and 5:00 p.m. A session shall be limited to no more than two hours.

(8) No more than three photo sessions shall be held on any one day. Sessions shall be scheduled so that all of the clients for one shall leave before the next session begins.

(9) Only four photo sessions per month shall be allowed on weekends.

(10) Photo sessions shall may include up to 15 people including the photographer.

(11) No music, food preparation or smoking shall be allowed during the photo sessions.

(12) The applicant shall comply with all relevant provisions of the Skagit County Code, including SCC 14.16.840 (Performance Standards), and SCC 14.16.870

(Notification of Development Activities on or Adjacent to Designated Natural Resource Lands.).

(13) The Special Use Permit shall be void if not started within two years of the date of approval and if abandoned for a period of one year.

(14) Planning and Development Services shall be notified within 30 days after any change in ownership of the subject parcel through a letter referencing PL06-0805.

(15) Failure to comply with any permit conditions may result in permit revocation.



Wick Dufford, Hearing Examiner

Date of Action: April 17, 2007

Date Transmitted to Applicant: April 17, 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.