

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant: Wayne Kiser
14639 East Edison Road
Bow, WA 98232

File No: PL06-0831

Request: Special Use Permit (Home Based Business II)

Location: At 14639 East Edison Road, west of the intersection of Bow Hill Road and East Edison Road, within Sec 33, T36N, R3E, W.M. (Parcel No. P48554.)

Land Use Designation: Agricultural-Natural Resource

Summary of Proposal: To operate a dog kennel involving the care of up to 12 adult Great Danes and their offspring. The project includes a nursery for whelping puppies and four dog runs (each 25' x 50' and containing an 8' x 8' shed to house dogs). Fencing shielded by tarps and OSB board would be provided for noise control.

Public Hearing: After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing on January 24, 2007.

Decision: The application is remanded to Planning and Development Services for further investigation and report.

FINDINGS OF FACT

1. Wayne Kiser (applicant) seeks a Special Use Permit (Home Based Business II) for the operation of a dog kennel within an Agricultural Natural Resource zone.

2. The site is about 6.92 acres of farm property, located west of the intersection of Bow Hill Road and East Edison Road. It is within a portion of Sec. 33, T36N, R3E, W.M. The address is 14639 East Edison Road. The parcel number is P48554. The zoning is Agricultural-Natural Resource (Ag-NRL). The property is located in Flood Hazard Zone A8, Map Panel #00506.

3. The parcel is trapezoidal in shape. West Bow Hill Road runs diagonally along the south. East Edison Road borders the short section on the east. The north and west borders abut neighboring residential and agricultural property. The Edison Slough lies to the south and east. The slough ultimately discharges to Samish Bay.

4. The application is the outgrowth of Code Compliance Case #CE06-0200. The dog raising business is currently in existence on the property without benefit of a permit. It involves the whelping, raising and selling of Great Danes.

5. On the property is a manufactured home with attached garage and loft, an existing hay barn, a horse barn (being built), a nursery for whelping puppies (12' x 40'), and four dog runs. The dog runs are connected and each occupies a 25' by 50' foot area. Each has an 8' by 8' foot shed to house the dogs.

6. The home is near the Bow Hill/East Edison intersection. The dog runs are currently located near the north property line. The new horse barn is near the north line behind (to the west) of the dog runs. Further west behind the horse barn is the hay barn. The southerly part of the property is in pasture.

7. A perimeter fence has been built around the dog runs. A tarp and OSB board (particle board) have been attached to this fence on three sides to help abate noise. OSB board has also been placed between the runs to keep the dogs from barking at each other. The winter winds have not been kind to the tarp.

8. At present, dog wastes are picked up daily and placed in a receptacle. The wastes are collected weekly by Waste Management Systems.

9. The applicant resides on the property with other members of his family. The business is secondary to the use of the property for residence purposes. The intention is to continue operate the Great Dane business as a home based operation. The plan is to use family members as employees. There will be a maximum of 12 adult dogs on site at any one time, along with their associated offspring. No number is given for the "associated

offspring” but apparently they may be far more numerous than the adults. The record indicates as many as 60 puppies on the site at one time.

10. The dogs are all American Kennel Club registered. A veterinarian regularly visits the site to insure the dogs are healthy and have the proper shots.

11. The business is advertised on the internet and attracting some buyers from out of the immediate area. The business involves only periodic visits to the site by customers, estimated at no more than three a week. The traffic generated will be negligible. There is adequate on-site parking.

12. The County would require landscaping around the dog runs so that they are effectively shielded from outside view.

13. The proposal was reviewed under the State Environmental Policy Act (SEPA) and a Declaration of Non-Significance (DNS) was issued on November 30, 2006. The comment and appeal periods ended on January 9, 2007. The DNS was not appealed.

14. Critical Areas review was performed in connection with the building permit for the new barn (BP06-0722). No critical areas issues were identified.

15. Reviews by other County departments resulted in comments about the possibility of pollution by manure. The County has recommended a condition requiring the applicant to produce a waste management plan and have it reviewed and approved by both the County Health Department and the County Conservation District. The plan will need to demonstrate proper waste disposal and that there will be no impacts to water wells or surface waters in the vicinity. Similar information is apparently be sought by the State Department of Agriculture.

16. Letters of concern were received from both Taylor Shellfish Company and the State Department of Ecology directed to the possibility of fecal coliform contamination of Samish Bay. If this application is approved, they both recommended strict conditions to protect water quality in the bay. Taylor Shellfish specifically requested that the dog runs be covered and that waste products, including wash water from the runs, be collected and disposed of appropriately, perhaps by collection in a tank and removal by a septic pumper. In addition Taylor Shellfish asked for assurance of monitoring and compliance oversight by the County.

17. The new horse barn is apparently to house Clydesdale horses which the applicant is raising and selling. The Examiner assumes this is viewed as simply a farm operation encompassed by the Ag-NRL designation. Clearly, however, the introduction of these large animals to the site, in addition to the dogs, is an issue to be considered in connection with the overall waste management question. The record also indicates that pigs as well are being kept on the property.

18. The operation of the dog breeding and selling business on the site was begun last spring (2006) when the applicant moved to the property. He testified that he was unaware of any permit requirements when he moved to the site. After an initial era of good feeling, neighborhood relations between the applicant and others who live nearby deteriorated rapidly and seriously. What is represented as a previously peaceful and friendly neighborhood has become a scene of bitter contention. Numerous complaints have been made about the dog operation and enforcement efforts were initiated.

19. At the hearing, the neighbors introduced a petition opposing the subject permit that was signed by a large number of people, many of whom reside in the near vicinity. The petition goes into a number of issues beyond the dog kennel and is, at least, an expression of the extreme polarization that has resulted from the applicant's activities.

20. The most obvious problem is the barking of the dogs. At the hearing there was disagreement about how much the dogs bark and about how much of a problem their barking is. The applicant's supporters are mainly customers who say that he runs a first-rate dog-raising facility and that the dogs are generally quiet. His detractors are primarily neighbors who take a decidedly contrary view. At the hearing the antagonism between the applicant and the neighbors was palpable. There are at least six couples who live close enough to be able to hear the dogs. The closest neighbors represented the noise as a major interference with their enjoyment of their own property.

21. The County's Staff Report proposes to approve the application if the location of the dog runs is moved next to the horse barn. Under this condition, the dogs are to be housed in the barn at night, but may use the outdoor runs during the day. The outdoor runs are to be shielded with OSB board and surrounded by Type II landscaping.

22. Testimony showed that the tarp and the OSB board have not cured the noise problem. The barking is still plainly audible to neighbors. The addition of landscaping would change the visual scene, but not have much of a sound dampening effect.

23. Other than barking, the primary issue is the likelihood of water pollution. The applicant's property, like others in the area, gets very wet in the winter and there is ponding here and there. During the current winter, the dog runs have become extremely muddy. Samish Bay is close enough to be affected by run-off from this property. The situation requires extraordinary care in the management of wastes.

24. The applicant opposed putting the dogs in the horse barn, noting, reasonably enough, that it was being built for horses. He said that, instead, he would be willing to build insulated and heated dog houses and that he now proposes building the dog runs near the northwest corner of the property behind the old hay barn. The County said it would have no objection to this change, but that the applicant would still have to comply

with the code requirement that no agricultural land is needed to accommodate the home based business.

25. The application contains neither a site plan nor a vicinity map showing neighboring residences that are adequate to analyze what the change in location of the pens might really mean. The precise dimensions and relationships of on-site facilities and their distances from property lines are nowhere shown. There is no way to determine that the proposed relocation of the kennels would improve the noise situation. There is no delineation of topography from which potential drainage routes can be evaluated.

26. On the present record, there is no way to know whether agricultural land would need to be taken to effect the changed location of the kennels.

27. Further, the record does not show whether wastes can be effectively controlled to provide confidence that contamination affecting oyster beds will not occur. The approval of a proposal by the Hearing Examiner provides a certain impetus to the approval of reports ordered as conditions of approval. Given the extreme sensitivity of the established shellfish business in the area, a waste management plan should be reviewed and approved before any recommendation of permit approval is given. It may be that the kinds of conditions that Taylor Shellfish has recommended should be included in any such approval.

28. Finally, although the applicant has made some attempt at noise reduction, disturbance of the neighbors continues. With the new kennel location, there needs to be a fresh evaluation of whether the operation can really be successfully operated at this site without imposing undue noise into the residential environment. Can compatibility with existing and planned land use in the area be assured? Or does this operation merely promise to create an ongoing and unending enforcement problem?

29. 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 proposal.

2. The requirements of SEPA have been met. It is too late to ask the County to revisit its DNS decision.

3. A Home Based Business II is allowed by Hearing Examiner Special Use Permit in an Agricultural-Natural Resource Lands zone “provided no conversion of agricultural land is required to accommodate the business activity.” SCC 14.16.400(4)(c).

4. A Home Based Business II may not have an “exterior indication of the home occupation or variation from the residential character of the property.” SCC 14.16.900(3)(e)(iv).

5. A Home Based Business II may not create a level of noise impacts “beyond that which is come to a residential area.” SCC 14.16.900(3)(e)(v).

6. A Special Use must be “compatible with existing and planned land use.” SCC 14.16.900(2)(b)(v)(A).

7. A Special Use must comply with the Skagit County Code. SCC 14.16.900(2)(b)(v)(B),

8. A Special Use may not “create undue noise.” SCC 14.16.900(2)(b)(v)(C).

9. For approval of a Special Use, the “potential effects regarding the general public health, safety, and general welfare” must be evaluated. SCC 14.16.900(2)(b)(v)(E),

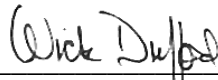
10. The Examiner concludes that on the present record, none of the legal standards set forth in Conclusions 3 through 9 above can be affirmatively decided upon in a manner that supports the issuance of a permit.

11. Accordingly, the matter should be remanded to the Department of Planning and Development Services for further investigation bearing on each of these standards. In connection with this investigation, the applicant should be required to submit a detailed site plan with features drawn to scale and appropriate dimensions, distances, and topographic lines shown. In addition a detailed waste management report should be completed and evaluated in order to eliminate any likelihood of water pollution before any permit approval is recommended. Finally, on remand the question of compatibility should be considered anew. Is this really the right place for this home business?

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

DECISION

The application is remanded to the Department of Planning and Development Services for further investigation consistent with the above Findings and Conclusions. When this investigation is complete, an amended Staff Report should be prepared and the matter should again be set for hearing before the Examiner.



Wick Dufford, Hearing Examiner

Date of Action: March 13, 2007

Date Transmitted to the Applicant: March 13, 2007