

## NOTICE OF DECISION

### BEFORE THE SKAGIT COUNTY HEARING EXAMINER

- Applicant:** Darby Darrow  
Rockpile Dojo, Bushido Productions Unlimited LLC  
3874 Sharpe Road  
Anacortes, WA 98221
- Request:** Special Use Permit, PL15-0514  
Home-Based Business 3
- Location:** 3874 Sharpe Road, south of Sharpe Road and west of Cottage Lane  
within a portion of NE1/4SE1/4 Sec. 15, T34N, R1E, W.M.  
Parcel # P19513
- Land Use Designation:** Rural Reserve (RRv)
- Summary of Proposal:** To operate a martial arts/fitness and firearm safety training facility on a 9.72-acre residential parcel. Martial arts/fitness training, held three days a week, is the primary activity. Firearms safety classes are held once every three months. No discharge of firearms is involved.
- SEPA Compliance:** Determination of Non-Significance (DNS), dated December 1, 2015.
- Public Hearing:** January 13, 2016. Testimony by Staff, Applicant and 10 members of the public. Planning and Development Services (PDS) recommended approval. The Examiner visited the site and surrounding neighborhood.
- Decision/Date:** The application is approved, subject to conditions.  
February 4, 2016.
- Reconsideration/Appeal:** Reconsideration may be requested by filing with PDS within 10 days of this decision. Appeal is to the Board of County Commissioners by filing with PDS within 14 days of this decision or decision on reconsideration, if applicable.
- Online Text:** The entire decision can be viewed at:  
[www.skagitcounty.net/hearing examiner](http://www.skagitcounty.net/hearing_examiner)

## **FINDINGS OF FACT**

1. Darby Darrow seeks permission to operate a home-based business involving classes in martial arts and fitness, as well as periodic instruction in firearms safety. The business is called Rockpile Dojo, Bushido Productions Unlimited LLC.

2. The site is a 9.72 acre residential property located at 3874 Sharpe Road, within a portion of NE1/SE1/4 Sec. 15, T34N, R1E, W.M. The property is south of Sharpe Road and west of Cottage Lane. The parcel number is P19513. The zoning is Rural Reserve (RRv).

3. The permission sought is a Special Use Permit for a Home-Based Business 3.

4. The parcel contains a two bedroom 2,700 square foot home with an attached garage constructed in 1994. This is the applicant's residence. About 45 feet northeast of the residence is a 1,260 square foot detached pole building constructed in 2013. The structures lie within the northwest portion of the property, a 2.2-acre area that is cleared. Also in this cleared area are two 20' x 10' foot storage sheds, a driveway, and a 4,000 square foot graveled area. The balance of the parcel is forested.

5. The pole barn is setback 35 feet from Sharpe Road. Between the road and the structure is a 25-foot high hedge. The area around the pole barn is in grass.

6. A wetland exists on the next property to the west. A portion of the wetland's buffer is located on the subject site and has been placed in a Protected Critical Area (PCA) easement recorded with the County Auditor.

7. The subject site is generally flat. Water is obtained from a domestic well. There is a three-bedroom septic system with the septic tank located south of the house. The property slopes slightly to the south and drainage is directed to a retention pond situated toward the lower end of the lot.

8. There are two access points to the property, both from Sharpe Road. The access points are the ends of a U-shaped driveway that runs around the pole building and intersects the large graveled area along its route.

9. There is a private shooting range on the property, located centrally in the forested area and some distance away from the pole barn. It is a small personal range with an eight-foot man-made berm backed up against a hillside.

10. The present permit application is the result of an enforcement case (#CE15-0078) brought by the County after neighbors complained about activities on the site. Martial arts/fitness training and firearms safety classes have been conducted on the property since October 2013.

11. The business enterprise as originally proposed to the County included the use of the on-site gun range for firearms safety training. Later the applicant modified his application to

exclude the use of firearms in association with the home-based business. A gun/shooting range open to the public is not an allowed use within the Rural Reserve zone.

12. The martial arts/fitness classes are proposed to be held in the pole building and, when weather permits, on the flat 90' x 80' workout lawn to the west. In the past some training has been conducted out of doors and some fitness apparatus has been placed on the adjacent lawn.

13. The pole building is a single-room structure with insulated walls and ceiling. The room is set up with martial arts mats on one section and fitness equipment in the other.

14. Bathroom facilities are presently located in the nearby garage (attached to the residence). For use in connection with the proposed training activities, this bathroom must be modified to meet ADA requirements. Students generally arrive in their fitness attire, but if needed, the bathroom may be used for changing. The applicant has indicated a desire to build a bathroom addition to the pole building if this permit is approved.

15. The plan is to continue to hold martial arts/fitness classes on a three day per week schedule. The classes are to be on Monday, Wednesday and Friday. Up to five one-hour classes are to be conducted each day, varying in size from 4 to 12 students. The classes will include Adult Martial Arts, Kid's Martial Arts and an Adult Fitness Class. Kid's Martial Arts will typically have the largest class size with up to 12 students. On many class days students will stay on site to attend more than one class.

16. In addition to the martial arts/fitness classes, firearms safety classes are proposed to be held on Saturday once every three months (four times a year). These classes will be held in the pole barn with an average class size of 4-5 students. Each class will run from four to five hours. These classes will offer: (1) a firearm safety lecture, (2) firearm defense training and (3) home defense training. Firearm defense will teach hand-to-hand combat and instruction on how to disarm a person holding another at gunpoint. Home defense will involve role playing in a home invasion scenario. No loaded weapons will be used. The home defense class will involve the firing of Air Soft Guns, a type of BB gun that runs off AA batteries and fires a plastic BB.

17. The firearm safety classes will not involve the discharge of firearms, either indoors or outdoors. The on-site private firing range will not be used. As proposed, these classes will not result in noise that can be heard outside of the pole building.

18. During most weeks (those not involving firearm safety classes), the home business will operate 20 hours or less. The proposal is for the first class to begin at 6:15 a.m. and for the last class to begin at 6:30 p.m. The middle of the day will generally be open. The first class of the day typically is the smallest with an average of four students. The last class of the day has an average class size of eight students.

19. The classes will generally be taught by one instructor, usually the applicant.

20. Thirteen standard parking spaces and one ADA/handicap parking space will be provided. These are adjacent to the pole barn and adjacent to the garage. The number of spaces provided will be more than adequate to accommodate the proposed needs.

21. The easterly portion of the property is densely forested. A tall hedge runs along the north property line and the west property line. Views into the site are available only at the entryways. No additional landscaping is required to shield the proposed use from external views.

22. The surrounding properties in all directions are designated Rural Reserve (RRv). This part of South Fidalgo Island has, to date, largely retained its rural character. The majority of surrounding parcels are 5-10 acres holdings containing single-family residences, forested areas and pasture lands. Horses are kept on a number these properties. The residence nearest the subject property is located over 500 feet to the north and west. Two-tenths of a mile to the west is Sharpe Park & Montgomery-Duban Headlands, zoned Public Open Space of Regional/Statewide Importance (OSRSI). Campbell Lake lies perhaps two miles to the east with most of the intervening property in forest.

23. Sharpe Road is narrow winding country road without shoulders, running generally east-west. The major roadway in the area is Rosario Road running north-south and accessing the nearby state park property associated with Deception Pass (Rosario Beach, Bowman Bay). Sharpe Road intersects Rosario Road a short distance west of the subject property.

24. Environmental review of the proposed special use application was conducted pursuant to the State Environmental Policy Act (SEPA). The result was the issuance of a Determination of Non-Significance (DNS) issued December 1, 2015. The DNS was not appealed.

25. Critical area review was conducted under PL 10-0408. The location of the building and parking was approved. The location of the firing range requires further review. If the range is located within the harvest boundary of FPA #2814112, the six-year development moratorium applies and a forest practice waiver will be required. However, because the shooting range will not be used for the proposed home-based business, additional critical areas review was not needed for the subject application.

26. The application was circulated to County agencies. A number of conditions of approval were suggested, but generally there was no opposition from the various departments.

27. The application and the hearing were given public notice as required by law. Sixty letters from members of the public were submitted in response. At the public hearing 10 citizens testified. The overwhelming sentiment of the letters and testimony was in opposition to the proposed special use.

28. The Staff reviewed the application under the general Special Use criteria of SCC 14.16.900(1)(b)(v) and under the specific criteria for a Home-Based Business 3. The Staff concluded that the use, if conditioned as recommended by them, will be consistent with the

relevant approval criteria. The Hearing Examiner concurs in this conclusion and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

29. The major concern of public commenters was the use of guns on the subject property. Almost uniformly they expressed opposition to any outdoor firing in connection with the home-based business, stating that past gunfire has been disturbing to both people and animals in the neighborhood. The applicant's decision to remove any firearms (other than Air Soft guns) from the home-based business operation mollified some, but there remained a suspicion that conduct of the business would lead to increased use of the private firing range on the property through invitations to students for after-class shooting.

30. The Skagit County Code does not directly regulate property owners who choose to engage in target practice with firearms or hunt on their own property. Nevertheless, neighbors were hopeful that the ruling on this permit application could somehow reach beyond the home-business to regulate use of the gun range.

31. The applicant is a retired policeman who is sensitive to the proper use of firearms. Records kept by the applicant showed that 1,174 live rounds were fired at his shooting range in 2014 and 1,052 live rounds were fired there in 2015. The record showed that firing occurred only occasionally, never more than four days a month, and generally at a rate of less than 150 rounds on any given day. Live fire shooting occurred on only a few days in any particular month and in many months there was no firing at all. On an annual average, the range was used 1.4 times per month. It is never used after dark. The applicant testified that only one round has been fired on the range since August, 2015.

32. It does not appear that use of the private range has been excessive in the past. Use of the private range by customers of the home-based business will be prohibited by a condition of approval. The Examiner finds that conduct of the home-based business, as conditioned, is not likely to result in increased use of the private shooting range.

33. Another concern of the public commenters was traffic on Sharpe Road and surrounding roads. There will be approximately 12 vehicles per day on the Mondays, Wednesdays, and Fridays when the martial arts classes are held. The comings and goings of cars will be spread out over the course of the each day. The peak hour will involve four to five vehicles. This level of traffic is not beyond that which is common to residential areas. The occasional firearms safety classes on Saturday will involve only four or five students and will not significantly increase traffic. There is no record of any accidents on Sharpe Road since the business began operations.

34. A general criticism by public commenters was the assertion that this business is simply not compatible with its setting – that is not in keeping with the rural character of the neighborhood. The activities as proposed and conditioned, will largely take place indoors within a structure that is consistent in appearance with the character with the rural surroundings. Outdoor activities will be limited and screened from outside view. As conditioned, the martial arts/fitness program will not introduce activities that will detract from rural character,

35. Some commenters argued that this business is not “incidental and secondary” to the use of the property for dwelling purposes, and therefore does not qualify as a “home-based business.” The Skagit County Code does not define “incidental and secondary”, but, using dictionary definitions, the Examiner is persuaded that the proposed use meets this requirement. Occupancy of the home as a residence is a full-time proposition. The home-based business will be conducted only three days a week for about five hours a day, and once every quarter for a portion of a Saturday.

36. A few commenters were of the opinion that the prior operation of this business without a permit is an indication that the applicant cannot be trusted to operate within prescribed limits. His story is that when he opened the business, he did not know about the requirements for land-use approval, and that when he found out, he took steps to obtain proper permission. Whatever the reason for the late application, there is no substantial basis for assuming that this former police officer will turn out to be a scoff-law and fail to abide by the terms of the permission he seeks.

37. Finally, some commenters were concerned with the restroom facilities available across the driveway from the pole barn. The applicant testified that the restroom is not, in fact, much used by students. The Health Department stated that the usage anticipated for the present restroom should not have a significant impact on the existing septic system. Nonetheless, the applicant has stated that he would like to construct a bathroom addition to the pole barn for use in the future.

38. The Examiner finds that the business proposed by Rockpile Dojo, Bushido Productions, as conditioned, complies with the Comprehensive Plan policy accommodating home-based businesses that are consistent with the character of adjoining properties and neighborhoods. The off-site impact of this use will be negligible.

39. The Examiner finds that the use, as proposed and conditioned, will comply the Skagit County Code, will not create undue environmental impacts, will not generate intrusions of privacy on surrounding properties and will not have ill effects on public health, safety and general welfare, nor conflict with the health and safety of the community. There are adequate public facilities and services to support the proposal.

40. The Examiner finds that the business proposed will not interfere with maintenance of the character, landscape and lifestyle of the rural area.

41. It is noted that the use of the pole building for the proposed use and remodel of the existing bathroom within the garage will require a Change of Occupancy building permit, changing the use to Assembly Type 3 (A3).

42. 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 subject matter of this proceeding. SCC 14.06.050(1)(b)(ii).
2. The requirements of SEPA have been met.
3. In the Rural Reserve zone, the proposed Home-Based Business 3 requires a Hearing Examiner Special Use Permit. SCC 14.16.320(4)(1).
4. As conditioned, the proposed Home-Based Business 3 is consistent with the general Special Use criteria of SCC 14.16.900(1)(b)(v).
5. As conditioned, the proposed use is consistent with the specific criteria for a Home-Based Business 3. SCC 14.16.900(2)(f).
6. Direct regulation of the on-site firing range is beyond the jurisdiction of the Hearing Examiner. The applicant is encouraged to take into consideration the sensitivities of his neighbors in his private use of the range.
7. Any finding herein which may be deemed a conclusion is hereby adopted as such.

## **CONDITIONS**

1. The proposed home business shall be carried out as described in the application, as modified by the conditions herein.
2. No discharge of firearms in association with the Home-Based Business will be permitted on site. As a condition of their participation, students of the Home-Based Business shall sign a statement swearing that they will at no time engage in shooting firearms at the on-site shooting range. The applicant shall not allow such shooting.
3. The applicant shall obtain an approved Change of Occupancy building permit for the pole barn, changing from private storage to Assembly 3(A) prior to holding classes within the structure.
4. For use of the bathroom within the adjacent garage in connection with the business, the applicant must obtain an approved building permit to remodel the bathroom to meet ADA requirements. The remodel must occur as soon as possible after issuance of the Special Use Permit.
5. All faucets or hose bibs that the public has access to must be signed as “non-potable water.” Bottled water shall be provided for the public to drink. No parking shall be allowed within the 100’ well protection zone for W94-022 except on concrete surfaces that drain away from the well.

6. This project is within the boundaries of Rural Fire Protection District #11. At the time of building permit review, the project must comply with the current International Fire Code. As a prerequisite to final approval, the Fire Marshal must perform a fire inspection.

7. The applicant shall comply with all the requirements for a Home-Based Business 3 as set forth in SCC 14.16.900(2)(f). In particular, the property shall have no exterior indication of the home occupation (except for a small unilluminated sign). Any apparatus or equipment for outside activities on the site shall be stored indoors when not in use.

8. All development on site shall comply with the dimensional standards of SCC 14.16.320 – Rural Reserve zone.

9. If any lighting is used during early morning or early evening, it shall be designed to illuminate only areas needed for ingress and egress and, to the extent possible, shall not broadcast light off-site.

10. Per SCC 14.16.900(1)(d), the use permitted must be established or a complete building permit must be filed within two years of permit approval, or the permit shall be void.

11. Expansion or intensification of the use approved hereby shall require additional review by Skagit County Planning and Development Service (PDS).

12. PDS shall be notified of any change of ownership of the subject property or of the business within 30 days of the change.

13. A copy of this permit decision shall be submitted with any building permits associated with this Special Use Permit.

14. Failure to comply with any condition hereof may result in permit revocation. SCC 14.16.900(1)(b).

### **DECISION**

The requested Special Use Permit (PL15-0514) is approved, subject to the conditions set forth above.

**DONE**, this 5<sup>th</sup> day of February, 2016.

  
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Wick Dufford, Hearing Examiner

Transmitted to Applicant and parties of record February 5, 2016.  
See Notice of Decision, page 1, for appeal information.