



Notice of Hearing Examiner Decision

02/01/17

To: Interested Parties and Parties of Record

RE: Project Name: KARE – Kitsap Animal Rescue & Education Dog
Training Facility
Applicant: John C. Albright & Viki Dianne Canafax
12774 NW Seaside Way
Seabeck, WA 98380
Application: Conditional Use Permit (CUP)
Permit Number: 16 04352

Enclosed is the Decision issued by the Kitsap County Hearing Examiner in the above-referenced matter.

The applicant is encouraged to review the Kitsap County Office of Hearing Examiner Rules of Procedure found at:

http://www.kitsapgov.com/dcd/lu_env/he/HE%20Rules%20for%20Kitsap%20County%20-%20206-23-09.pdf

The Decision of the Hearing Examiner is final, unless appealed, as provided under Washington law.

Please note affected property owners may request a change in valuation for property tax purposes, notwithstanding any program of revaluation. Please contact the Assessor's Office at 360-337-5777 to determine if a change in valuation is applicable due to the issued Decision.

The complete case file is available for review at the Department of Community Development, Monday through Thursday, 8:00 AM to 4:00 PM and Friday 9:00 AM to 1:00 PM, except holidays. If you wish to view the case file or have other questions, please contact Help@Kitsap1.com or (360) 337-5777.

CC: John C. Albright & Viki Dianne Canafax: dcanafax@wavecable.com
Team 4 Engineering: berni@team4eng.com

Interested Parties:

Dan Seacrist: dseacrist03@gmail.com

Becky Siegrist: RSiegrist@msn.com

**KITSAP COUNTY HEARING EXAMINER
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION**

**In the Matter of Request for Conditional Use Permit
File No. 16 04352**

January 30, 2017

THIS MATTER came before the Kitsap County Hearing Examiner on January 26, 2017. The Hearing Examiner makes the following Findings of Fact, Conclusions of Law, and Decision:

1. FINDINGS OF FACT

1.1 Proposal. The Applicants request a Conditional Use Permit ("CUP") to operate a dog training facility (not a kennel or dog boarding facility) within an existing 1,152 square foot pole building. The proposal includes holding four to six weekly classes with a maximum of eight students and their dogs. The classes will be held Monday-Friday 9:00 a.m. to 8:30 p.m. Classes would be about an hour or so and would not be continuous throughout the day, but scheduled throughout the week. All day workshops (without animals) are proposed one to two times per month on Saturday and Sunday 9:00 a.m. to 4:00 p.m. Occasional one on one training would occur. The Applicants are not proposing any structural changes or expansion of the existing pole building. The Applicants/property owners and site location are as follows:

Applicants/Property Owners: John C. Albright and Viki Dianne Canafax, 12774 NW Seaside Way, Seabeck, WA 98380.

Site Location: The site is located at 11755 Old Military Road NE, Poulsbo, WA 98370 (Assessor No. 112501-3-034-2007).

1.2 Administrative Record. Prior to the hearing, the Hearing Examiner reviewed Exhibits 1-28, which included the Staff Report. At the hearing, the Department of Community Development ("DCD") proposed adding additional exhibits, including two additional public comments, a Health Department decision with updated conditions, and a power point, as Exhibits 29-32. The Examiner admitted all exhibits.

1.3 SEPA. A Determination of Nonsignificance was issued on November 30, 2016.¹ No appeal was filed.

1.4 Notice. Pursuant to Kitsap County Code ("KCC") Title 21, Land Use and Development Procedures, DCD gave the required public notice for the CUP, including for the application itself and for the hearing.² No concerns on notice were identified.

¹ See Exhibit 18.

² See Exhibit 27.

1.5 Hearing. The Hearing Examiner considered the proposal at an open record public hearing on January 26, 2017. DCD, through Ms. Schaffer, who holds a master's degree in Urban and Regional Planning, summarized the proposal and relevant code requirements. As DCD found the proposal consistent with applicable requirements, it recommended approval, but with proposed Health District Condition 18 in the Staff Report to be replaced with the conditions outlined in the updated Health Officer Decision.³ In response to comment on a proposed condition requiring compliance with KCC 7.14.030 (which addresses noise from dog barking), the Planning Department clarified that the facility is not exempt and complaints could be filed against the facility itself.⁴

1.5.1 Applicant Testimony. Ms. Canafax (the Applicant) explained that she co-founded Kitsap Animal Rescue & Education ("KARE") in 2001, has trained dogs for 25 years, and she along with Ms. Hayes (who also testified and serves on KARE's Board of Directors), are both certified trainers. While KARE does animal rescues, KARE utilizes foster homes and does not operate a kennel or shelter. With respect to noise, she explained that KARE uses "clicker-based" training and positive reinforcement, not yelling and whistles. With this approach, she explained that KARE has successfully conducted training at its facilities in Silverdale and Bainbridge Island (the latter of which is located in the midst of several homes) without noise issues. KARE has also conducted summer camps for kids and there have never been complaints.

Ms. Hayes, who serves on KARE's Board of Directors explained that the hours of operation proposed were necessary to accommodate dog owner schedules and 10:00 a.m. to 2:00 p.m. would be unreasonable for most dog owners given their work schedules. The Applicant also addressed waste management, stating that should dogs defecate on site, waste would be picked up with a plastic bag and deposited into a screened garbage can. The Applicant's engineering firm, through Mr. Coleman, also provided sworn testimony. He explained that the Applicant had no objection with noise complaints submitted under KCC 7.14.030 being directed to the facility itself as a neighbor would not know which of up to eight dogs present was causing noise issues.⁵ However, he emphasized that the Applicant wished to cooperate with neighbors, and urged any neighbor concerns to be directed to the facility itself initially. He also invited neighbors to visit the facility. The Applicant explained that the building which will be used for training is already insulated and there will be some upgrades, including the addition of sheet rock, which would provide further sound attenuation.

1.5.2 Public Testimony. A neighbor, Mr. Russell, elaborated on his written testimony.⁶ He explained that while he had many concerns, his "biggest concern" related to the County's noise ordinance. He was concerned that the facility would be exempt and complaints would have to be filed against individual dog owners. He proposed including a condition stating that if any neighbors have a legitimate complaint, that complaint may be filed against the facility and would be acted upon as soon as possible. He was concerned about operating hours, and

³ See Exhibit 31.

⁴ See Title 7 KCC, including definitions at KCC 7.04.020.

⁵ The Applicant had no objection to DCD drafting a condition consistent with this testimony. DCD explained that the current condition sufficed as it applied to the facility.

⁶ See Exhibit 29, submitted at the hearing.

proposed shortening same to 10:00 a.m. to 2:00 p.m., to prevent cross over with morning and evening time with residents in the area. He also raised concerns about whether there would be insulation/sound deadening, and identified concerns with shouting and whistle blowing. His written comment raised several other concerns, including inconsistency with rural residential zoning, nuisance issues from noise, odor, traffic, and property value. Conditions to address these concerns were outlined in the written comment. They are summarized as follows:

- Operating hours Monday-Thursday 10:00 a.m. to 2:00 p.m., with no Friday, evening/night, weekend or holiday operations;
- All dog training and kenneling conducted inside a noise insulated facility so noise cannot be heard on surrounding properties; and,
- Canine waste management addressed to eliminate any odor and health hazard to surrounding properties.⁷

The Applicant, as noted above, responded to these comments at the hearing. While the Applicant stated the proposed operating hours would not be workable, the Applicant did note that the facility is insulated (with sheet rock to be added) and explained how KARE trains dogs and how canine waste will be managed.

Mr. Hayes (a spouse of a member of KARE's Board of Directors), testified that while he was skeptical initially, after learning about KARE's operations, he believes KARE is doing good work and is run by professionals. He said in visiting their training facilities, he did not believe any noise issues were present and that given how training is run, insulation would not be necessary.

1.6 Agency Comment. The proposal was circulated within the County, and comment was received regarding regulatory compliance. There were no objections to approval, as long as applicable requirements are met.

1.7 Written Public Comment. DCD received comment from neighbors Dan Seacrist and Becky Siegrist, who had questions regarding the noise level from barking dogs.⁸ The Applicant responded to the inquiries and concerns.⁹ Following this exchange, Mr. Seacrist submitted additional comment, which was admitted at the hearing. This comment noted "the only concern I still have is with the permit wording, if [the Applicant] would or could specifically exclude boarding animal's overnight on site."¹⁰ The Applicant did clarify at the hearing that the proposal does not involve any overnight boarding, so would not be authorized through this CUP. Written comment was also received from neighbors John and Delia-Alliece Russell, which is addressed above, as Mr. Russell also testified at the hearing.

1.8 Zoning/Plan Designations. The Comprehensive Plan and zoning designations are both Rural Residential (RR). The immediate surrounding properties are also zoned RR. To

⁷ For exact wording, see Exhibit 29.

⁸ See Exhibits 15 and 16.

⁹ See Exhibits 19 and 20.

¹⁰ See Exhibit 30.

the east approximately one mile away, the zoning changes to Urban Low. To the west, RR zoning continues for slightly over a mile until Puget Sound.

1.9 Site and Surrounding Land Uses. The parcel is approximately 1.33 acres or 57,935 square feet. The parcel is shaped irregularly – a square shape on the northern portion connected to a rectangle piece by a narrow segment approximately 215 feet long and 28 feet wide. In between the square portion and the rectangle portion (on a separate parcel) is a single family residence also owned by the Applicants. Parcels in the area are similar or larger in size, and are predominantly developed with single family residences, out buildings, and agricultural uses.

1.10 Utility and Public Services.

- **Water:** Private well
- **Power:** Puget Sound Energy
- **Sewer:** Septic
- **Police:** Kitsap County Sheriff
- **Fire:** Central Kitsap Fire District
- **Schools:** Central Kitsap School District

1.11 Access. Access to the site is off of Old Military Road NE, a County maintained road.

2. CONCLUSIONS OF LAW

2.1 Hearing Examiner Review Authority.

The Hearing Examiner has review authority for this Conditional Use Permit application.¹¹ The Hearing Examiner may approve, approve with conditions, or deny a Conditional Use Permit. The Hearing Examiner may also continue the hearing to allow for additional information necessary to make the proper decision.¹²

2.2 Code Requirements Specific to the Proposed CUP in the RR Zone.

Dog training facilities are not specifically enumerated in KCC use Table 17.410.040(A). Staff used the most like use – Kennels or Pet Day-Cares – which are permitted land use, but conditionally approved activity in the RR zone pursuant to KCC 17.410.040(A).

The CUP must comply with the KCC regarding landscaping standards, including “a minimum of fifteen percent of the total site area shall be landscaped to the standards set forth in this chapter.”¹³ There is screening on the northern and western portion of the property but the screening trees are on the neighboring parcel. The CUP is conditioned¹⁴ to provide screening in

¹¹ See KCC Sections 17.410.010(C) and 21.04.100.

¹² See KCC 17.550.030(A).

¹³ See KCC 17.500.025.

¹⁴ See Condition 4.

accordance with KCC 17.500.027(B) on the subject parcel. The Applicants are proposing landscaping improvements on the east boundary north of the driveway which include two offset rows of Douglas Fir trees with groundcover. The application also proposes a rhododendron shrub south of the proposed dog training building to screen the storage of garbage and recycling bins. Hydroseed with permanent seeding is proposed for the small area that will be exposed by the driveway widening. KCC requirements regarding landscaping standards are met.

The Applicants may attach lights to the building exterior. However, "[l]ighting is to be directed away from adjoining properties. Not more than one foot candle of illumination may leave the property boundaries."¹⁵ Adjacent properties should not be significantly impacted by glare if lighting is directed down and if no more than one foot candle of illumination leaves the property line. KCC requirements regarding exterior lighting are met.

No roof-mounted air conditioning or heating equipment is proposed in this application, so the KCC requirement that "[a]ll roof-mounted air conditioning or heating equipment, vents, ducts, or other equipment shall not be visible from any abutting lot, or any public street or right-of-way as feasible"¹⁶ is met. The existing features and character of the site will remain intact in relation to this project. The Applicants are not proposing outdoor storage areas that would impact the residential neighbors, so the KCC requirement to "[l]ocate service areas, outdoor storage areas and other intrusive site features away from neighboring properties to reduce conflicts with adjacent uses"¹⁷ is met. The Applicants are proposing garbage and recycling containers south of the training building, which will be screened with a rhododendron shrub. All animal waste will be immediately bagged and disposed into the appropriate screened receptacle. Thus, the KCC requirement that "[e]very parcel with a structure shall have a trash receptacle on the premises ... which shall comply with adopted public works standards and be of sufficient size to accommodate the trash generated" and "screened on three sides with fencing and/or landscaping as determined appropriate by the director," is met.¹⁸

KCC requires "[p]edestrian access shall be accommodated on-site from the public right-of-way, and throughout the site to minimize potential conflicts between pedestrian and vehicular circulation."¹⁹ The proposed use receives direct vehicular access from Old Military Road NE. Staff does not anticipate an increase in pedestrian traffic to the site related to the training facility, and there should be adequate area for visitors to park on site. KCC also requires "[d]evelopments shall be limited to one ingress/egress per three hundred lineal feet along a public arterial. Small parcels that provide less than two hundred fifty feet of road frontage shall be limited to one parking lot entrance lane and one exit lane."²⁰ The Applicants are proposing access from an existing driveway approach, and the standard is not applicable. As such, access and circulation requirements are met.

¹⁵ See KCC 17.105.110.

¹⁶ See KCC 17.420.030(D)(1).

¹⁷ See KCC 17.420.030(D)(2).

¹⁸ See KCC 17.420.030(D)(3).

¹⁹ See KCC 17.420.030(E)(1).

²⁰ See KCC 17.420.030(E)(2).

The development must comply with the off-street parking requirements prescribed by Chapter 17.490. KCC Chapter 17.490 does not have a parking standard for a dog training facility. Staff determined the “most like” use would be “Retail and Personal Services” which requires one parking space per 200 square feet. The pole building which will host the training sessions is 1,152 square feet, requiring 6 spaces. The application states the existing parking area will be widened to accommodate 10 parking spaces, exceeding the requirement for adequate off-street parking.

The development must comply with the guidelines set forth in the Kitsap County Comprehensive Solid Waste Plan, and the application is consistent with same.

The Applicants are required to apply for sign permits in accordance with KCC Section 17.510 Sign Code. If signage is proposed, staff recommends signage to be consistent with Moderate Home Business requirements so signage is compatible with the neighborhood’s rural residential character. Signs are required to be non-illuminated, not exceeding four square feet which will be subject to sign permit approval, and the CUP is conditioned as such.²¹

2.3 Conditional Use Permit Requirements.

A CUP must comply with the following:

1. The proposal is consistent with the Comprehensive Plan;
2. The proposal complies with applicable requirements of this title [Title 17];
3. The proposal will not be materially detrimental to existing or future uses or property in the immediate vicinity; and
4. The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing character, appearance, quality or development, and physical characteristics of the subject property and the immediate vicinity.²²

These criteria are met. The Staff Report provided detail on applicable comprehensive plan policies. These policies encourage allowing home-based cottage-type businesses and industries in rural areas that do not negatively affect rural level of service or rural character.²³ The proposal is a small scale business which would operate out of an existing building. Animal training operations are consistent with rural uses, which include animal maintenance/farming activities. Also, the use has been further conditioned to address compatibility concerns on surrounding rural residential uses. Urban services not required for the use. The use is subject to landscaping/screening requirements and waste must be properly managed to minimize environmental impacts. The proposal is consistent with the comprehensive plan.

²¹ See Condition 6.

²² See KCC 17.550.030(A).

²³ See Land Use Policy 59, along with Land Use Policies 50 and 51, referenced on p. 3 of Exhibit 28 (Staff Report).

The proposal is conditioned to ensure compliance with Title 17 and other applicable code requirements. No relevant code provision was identified which would not be complied with. Also, the proposal will not be materially detrimental to existing or future uses or property in the immediate vicinity. All impacts identified have been addressed and mitigated with appropriate mitigation and/or code requirements. Given the professional nature of the operation and how classes will be conducted, the use is not expected to have any significant noise issues. However, to provide further protection, a condition is included to provide an enforcement mechanism. Also, the existing building in which dog training will occur is insulated and sheet rock will be added, providing additional mitigation. With training classes occurring 6-8 times per week with no more than eight dogs and pet owners, traffic impacts are not significant. Any waste will be promptly disposed of, so odors are not expected to be an issue. Given the impacts are not likely to be significant, and mitigation is imposed to ensure same, it is unlikely property values would be adversely impacted.

The proposal is compatible with surrounding existing and planned uses. As addressed above, noise, waste management (odor), and traffic impacts will not be significant and are fully mitigated. The use is the type of use expected within a rural area. Conditions are imposed to ensure all code requirements are met, and impacts are adequately addressed. As a result, the use is consistent with the existing character, appearance, quality of development, and physical characteristics of the property and immediate vicinity. As conditioned and proposed, the dog training facility meets all CUP criteria.

DECISION

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the requested CUP, provided the following 21 conditions are adhered to.

Planning/Zoning.

1. The uses of the subject property are limited to the uses proposed by the Applicants and any other uses will be subject to further review pursuant to the requirements of the KCC. Unless in conflict with the conditions stated and/or any regulations, all terms and specifications of the application shall be binding conditions of approval. Approval of this project shall not be, and is not to be, construed as approval for more extensive or other utilization of the subject property.

2. All required permits shall be obtained prior to commencement of land clearing, construction and/or occupancy.

3. Landscaping shall be installed and maintained in conformance with the requirements of KCC 17.500. Landscaping shall be installed and inspected prior to requesting a final inspection, or guaranteed by means of an assignment of funds or bonded in the amount of 150 percent of the cost of installation.

4. An updated landscaping plan shall be submitted with the building permit showing a screening buffer in accordance with KCC 17.500.027(B) on the subject property, not the

neighboring parcel.

5. The Applicants own the adjacent property to the south, containing a single family residence. At the time the Applicants sell either property, a screening buffer must be placed on the subject property in accordance with KCC 17.500.027(B).

6. Any and all signage design and location (including exempt signs) shall comply with KCC 17.510, and be reviewed and approved by DCD prior to installation. Signage may require a separate permit.

7. The recipient of any conditional use permit shall file a Notice of Land Use Binder with the county auditor prior to any of the following: initiation of any further site work, issuance of any development/construction permits by the county, or occupancy/use of the subject property or buildings thereon for the use or activity authorized. The Notice of Land Use Binder shall serve both as an acknowledgment of and agreement to abide by the terms and conditions of the conditional use permit and as a notice to prospective purchasers of the existence of the permit. The Binder shall be prepared by the Department and recorded at the Applicants' expense. The Applicants shall provide recorded copies of the Binder to the Department immediately after recording. The Binder shall be recorded within 30 days of notification from the Department that the Binder is ready to be recorded.

8. This CUP approval shall automatically become void if no development permit application is accepted as complete by DCD within three years of the Notice of Decision date or the resolution of any appeals.

9. The decision set forth herein is based upon representations made and exhibits contained in the project application (16 04352). Any change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to further review and approval of the County and potentially the Hearing Examiner.

10. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition to the approvals granted and is a continuing requirement of such approvals. By accepting this/these approvals, the Applicants represent that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the Applicants agree to promptly bring such development or activities into compliance.

11. Any violation of the conditions of approval shall be grounds to initiate revocation of this CUP.

12. Activity must comply with KCC Chapter 7.14.030 Dog Barking.

13. Hours of operation shall be limited to Monday-Friday 9:00 a.m. to 8:30 p.m., and Saturday-Sunday 9:00 a.m. to 4:00 p.m.

Development Services and Engineering.

14. If the project proposal is modified from that shown on the submitted site plan dated September 16, 2016, Development Services and Engineering will require additional review and potentially new conditions.

Traffic and Roads.

15. The Applicants shall submit an Application for Concurrency Test (KCPW Form 1601) as required by Chapter 20.04.030, Transportation Concurrency, of the KCC. The KCPW 1601 form reserves road capacity for the project.

16. The Applicants shall submit a Road Approach permit application, showing plans for construction of the road approach between the edge of existing pavement and the right-of-way line at all intersections with county rights-of-way. Approaches shall be designed in accordance with the Kitsap County Road Standards as established in Chapter 11.22 of the KCC. Existing approaches may need to be improved to meet current standards.

17. The developer's engineer shall certify that there is adequate entering sight distance at the intersection of the site access and Old Military Road NE. Such certification shall note the minimum required sight distance, the actual sight distance provided, and a sight distance diagram showing the intersection geometry drawn to scale, topographic and landscaping features, and the sight triangle. The sight distance shall meet the requirements of the Kitsap County Road Standards. The certification shall also note necessary measures to correct and maintain the minimum sight triangle. The required information shall be submitted with the Road Approach permit application.

Health District.

18. Maintain install depth at 6" to stay out of burn in Soil log 2.

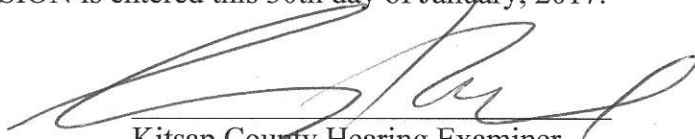
19. Approved for up to 18 employees/students.

20. No animal waste in septic system.

General.

21. The Applicants shall address canine waste and noise issues substantially consistent with the description provided in the Findings in Section 1.5.1 above. The Applicants and neighbors are encouraged to coordinate with one another on compatibility concerns.

THIS DECISION is entered this 30th day of January, 2017.

A handwritten signature in black ink, appearing to read 'Susan Drummond', written over a horizontal line.

Kitsap County Hearing Examiner
Susan Elizabeth Drummond