



Staff Report and Recommendation Hearing Examiner Permit Revocation

Report Date September 30, 2020

Hearing Date October 8, 2020

Date of Original CUP Approval July 24, 2008

Previous Owner/Original Applicant

Tina Stafford
Four Paws Fun
10680 Ridge Rim Trail SE
Port Orchard, WA 98367
fourpawfun@msn.com

Project Location

10680 Ridge Rim Trail SE
Port Orchard, WA
South Kitsap County
Commissioner District 2

Attorney for Previous Owner

James Carmody
Meyer, Fluegge & Tenney, PS
230 S 2nd St, Ste 101
POB 22680
Yakima, WA 98907
Carmody@mftlaw.com

Current Owner

Timothy and Paula Olcott
23614 212th Ave SE
Maple Valley, WA 98038
olcottt@icloud.com

Assessor's Account #

262301-2-027-2003

Original Permit Number

07-49177

Project Name

Four Paws Fun

Type of Application

Conditional Use Permit (CUP) Revocation
Zoning Use: 'Kennels or Pet Daycare' as a similar use to Specific Activity
Specific activity: Dog training

State Environmental Policy Act

Mitigated Determination of Non-Significance
Issued June 11, 2008

Background

Tina Stafford operated a dog training center called Four Paws Fun (FPF) at 10680 Ridge Rim Trail SE, Port Orchard, WA, located in south Kitsap County. The site is zoned Rural Residential. According to the business website (<https://fourpawfun.com/>), this business utilized an arena and adjacent grounds for dog “classes designed to get off leash control, focus and engagement for agility or just peace of mind”, and listed three other trainers/instructors besides the owner. The website most recently listed 19 kinds of classes.

Tina Stafford provided a complete and accepted application for FPF on December 20, 2007. The application described “10 square level acres, using 2½ acres to provide obedience and agility dog-training” and that FPF would be “using existing building and yard” (Exhibit 1). The Notice of Application elicited concerns about noise from training and dust from client traffic, which resulted in a State Environmental Policy Act (SEPA) determination of Mitigated Determination of Non-Significance (MDNS). The MDNS shows one broad condition requiring that long-term measures to control dust and noise be submitted to DCD and that ultimately “final plan details may be conditioned through the Hearing Examiner review process” (Exhibit 2). DCD notes that the final Hearing Examiner decision, discussed below, provides specific conditions to address noise and dust.

On June 20, 2008, DCD received a letter prepared by consultant and Ms. Stafford’s representative William Palmer providing clarity on the proposal in response to ongoing concerns about dust and noise (Exhibit 3). At the June 26, 2008 Hearing Examiner public hearing, the Hearing Examiner was given a revised site plan by William Palmer that shows an “outdoor training area” and a “proposed arena building” (Exhibit 4).

The 2008 FPF CUP was given specific conditions of approval by the Hearing Examiner (Staff Report, Exhibit 5; Hearing Examiner Decision, Exhibit 6). Certain conditions were tied to the SEPA MDNS, including constructing an indoor area to reduce noise impacts and watering for dust. The 2008 Decision also relies on the application and revised site plan, noted above.

In 2015, the arena building was given approval under C-Ag permit 08-58482 (Exhibit 7; Photo 1 below). Approval was requested for and given to amend the application and proposed arena to be constructed as an unenclosed structure, due to concerns about the higher cost of fire protection and the desired lower cost of an unenclosed arena. Beginning in 2019, DCD began to receive complaints from owners of a neighboring property, Michael and Cindy Moore, about noise from FPF during training events (Exhibit 8). This prompted DCD to review and understand that while it permitted the unenclosed structure in 2015, it should have only permitted a structure that was in concert with the SEPA MDNS and the Hearing Examiner Decision of Approval, which in essence is an enclosed structure. DCD cannot unilaterally alter what was approved by the Hearing Examiner and what is considered approved SEPA noise mitigation through a building permit.



Photo 1: Unenclosed FPF arena

FPF was sent a letter outlining the above concerns on July 23, 2019 (Exhibit 9) and no response was received in the two-week timeframe that was asked of by DCD. The letter was subsequently emailed to fourpawfun@msn.com on August 7, 2019 iterating that the same letter cannot be ignored (Exhibit 10, without attachment). This same email begins a chain of emails until August 16, 2019 (Exhibit 11), leading to no actions from the applicant or attorney until September 9, 2019 when Ms Stafford's attorney at the time, Ms Jane Koler, Land Use & Property Law, PLLC, initiates contact on for an on-site meeting of September 23, 2019 (Exhibit 12). The on-site visit affirmed understanding of the concerns outlined in the letter of July 23, 2019. Nonetheless, violations remained unabated and DCD proceeded with a Notice of Public Hearing for Revocation (Exhibit 13) on September 26, 2019 for which the September 19, 2019 Staff Report and Recommendation to the Hearing Examiner for Permit Revocation (Exhibit 14) was prepared. On September 23, 2019, Ms. Koler filed a motion to continue the September 26, 2020 hearing. DCD communicated on September 23, 2020 that it did not object to a thirty-day continuance to allow parties to attempt resolution. The Hearing Examiner consented to continuance and November 14, 2019 was chosen as the next Hearing date. However, on October 3, 2019, Ms. Koler indicated via a phone call that FPF was interested in an agreement to allow FPF a pathway to compliance and the November 14, 2019 hearing was continued until December 12, 2019.

On December 6, 2019, DCD met with Ms. Koler to review final terms of the compliance agreement. Subsequently, the December 12, 2019 hearing was continued until January 9, 2020. On December 9, 2019, FPF terminated Ms. Koler's representation. FPF retained new counsel, Mr. James Carmody, Meyer, Fluegge & Tenney, PS, who indicated on January 8, 2020 that FPF was ready to sign a compliance agreement. Both Parties signed a compliance agreement on January 9, 2020 (Exhibit 15) and the January 9, 2020 revocation hearing was withdrawn. The agreement stipulated permit application submittals for the enclosure of the arena and development of a secondary access to mitigate fire flow requirements (the access

and enclosed arena were required to be consistent with the June 26, 2008 site plan approved for the CUP), as well as further defined the number of total dogs allowed at any one class, provided a time buffer between classes to mitigate noise and traffic and limited use of the outdoor arena to ten days per month. The required permit applications included applications for a building permit for the arena, a Right of Way permit, a Road Approach permit, and a Site Development Activity Permit. All permits were required to be submitted by January 30, 2020. The agreement also had performance stipulations for responsiveness to requests for additional information on application issues, obtaining issued permits, project duration for completion, and time-specific inspection requests. The agreement authorized extensions to deadlines, so long as an extension request was timely received, and the DCD Director found tangible progress being made.

On February 5, 2020, a Road Approach (RDAP) permit application for secondary access off of Verona Court was declared complete after its submittal on January 9, 2020. On February 24, 2020 an Information Request (IR) was sent to the applicant asking for clarity on the clearing limits, grading quantity, and tree volume to be removed, and that additional permit submittals would be needed. No response from the applicant was received. However, on June 2, 2020, David Lynam provided a recap of a conversation he had with the applicant (Exhibit 16) on behalf of FPF, citing difficulty in finding contractors to do the work, COVID-19 related issues, communications with staff, and concerns about the agreement timeframe. No further communication with the applicant occurred regarding the information request or other permit submittals.

On September 14, 2020 the property was transferred by statutory warranty deed to the current owners, Timothy and Paula Olcott (Exhibit 17). In addition to the written notice provided by the Clerk to the Olcotts on September 23, 2020 (Exhibit 18), DCD program manager Scott Diener notified Mr. Olcott by telephone of the CUP revocation on September 15, 2020. During that call Mr. Olcott asked about training only his wife's dogs as a hobby and then asked about training his wife's friends' dogs as a hobby without compensation, to which Mr. Diener advised this hobby was fine so long as it was without compensation or barter. Mr. Olcott asked about impact to the property otherwise and was assured this action only impacted the 2008 CUP for dog training. Later the same day, Ms. Olcott called Mr. Diener and asked about starting a business as it related to the CUP subject to proposed revocation. Mr. Diener advised that DCD felt the terms of the compliance agreement had been violated and that it was pursuing revocation, but that they would be getting the Staff Report recommending revocation which would help inform them on current circumstances. No further communication from the Olcotts has been received by DCD.

CUP Violation

Chapter 17.550 Kitsap County Code (KCC) regulates Conditional Use Permits. The code lists CUP conditions of approval that must be met and maintained. As part of the CUP process, and as required by state law, DCD reviews projects and makes a threshold decision if there are significant adverse environmental impacts and whether those impacts can be mitigated through conditions on the project. WAC 197-11-310. Significant is defined as likely to have more than a moderate adverse impact on the environment. WAC 197-11-794. The purpose of an MDNS is to reduce significant adverse impacts to moderate adverse impacts. WAC 197-11-350.

The 2007 application received a SEPA MDNS that essentially relied on project conditioning to mitigate and address noise and dust. The 2008 HE Decision notes in both the 'Summary of Request' (pg 1) and the 'Decision' (top of pg 12) that the pavilion will be an indoor training facility. It cannot be disputed that the application, staff review, hearing, testimony, and decision

envisioned an enclosed structure. Staff Planner Pavy references an 'enclosed arena' (pg 3). SEPA official Greetham references mitigation of dust and noise via Exhibit 32 (top of pg 4): "Once the proposed arena building is erected, much if not most of the dog training will take place inside this building thereby minimizing any noise associated with the activity to a few events that will involve outdoor training." During the hearing, William Palmer appeared and testified on FPF's behalf that "The arena building will be totally enclosed and much of the training will occur inside of the facility." Finding 8 (pg 7) also references a completely enclosed arena.

Violation of Terms of Compliance Agreement

Terms of the January 9, 2020 agreement stipulate in Section A.1 'Duties of Stafford; Building Enclosure and Supplemental Access' that the building permit application to enclose the arena as well as applications for the Right of Way permit, Road Approach permit (RDAP), and the Site Development Activity Permit (SDAP) be applied for by January 30, 2020. Only the RDAP was applied for in a timely fashion. As well, the applicant failed to respond to the February 24, 2020 RDAP Information Request, thereby not meeting any of the timeframe requirements called out in the agreement. Lastly, an extension was never requested.

Policies, Regulations and Provisions Applicable

KCC 17.550 *Hearing Examiner Conditional Use Permit* discusses the Hearing Examiner's role in reviewing and approving Conditional Use Permits (CUPs). KCC 17.550.030.B *Decision criteria – Conditional use permit* discusses conditions, requirements, standards, etc, that the Hearing Examiner may impose on permit approval.

When conditions of approval are not met, KCC 17.600 *Revocation of Permits or Variances* allows for DCD to request revocation of an approved permit.

KCC 21.04.280 *Revocation of approval* also addresses revocation and discusses revocation when the use for which such approval or permit was granted is not being executed, or the approval or permit granted is being, or recently has been, exercised contrary to the terms or conditions of such approval or permit, or in violation of any statute, resolution, code, law or regulation.

KCC 18.04.120 and related WACs regulate the MDNS. SEPA mitigation conditions may be enforced "in the same manner as any term or condition of the permit. . . ." KCC 18.04.120.D. Thus, the SEPA mitigation conditions not being met here may be enforced in the same manner as a violation of conditions of the CUP.

As to the January 9, 2020 *Voluntary Compliance Agreement*, Section D.2, 'Enforcement' advises that if the agreement is breached, the County may, among other provisions, 'elect to reinstate code enforcement processes including the CUP revocation hearing process,' which DCD is electing to do by this action.

Request

DCD requests that FPF be found in violation of the January 9, 2020 *Voluntary Compliance Agreement* and revocation of the FPF CUP as allowed in Kitsap County Code (KCC) 17.600 *Revocation of Permits or Variances* and 21.04.280 *Revocation of Approval*.

Documents Consulted in the Analysis

A complete index of exhibits is located in the project file. To date, the index to the record consists of the following exhibits:

Exhibit #	Document	Date or date stamped
1	CUP Application	Dec 20, 2007
2	SEPA MDNS	June 11, 2008
3	Letter, Palmer Clarification of Project on behalf of Applicant	June 20, 2008
4	Revised Site Plan	June 26, 2008
5	CUP Staff Report to Hearing Examiner	June 19, 2008
6	Hearing Examiner Decision	July 24, 2008
7	C-Ag Building Permit App Revision	June 6, 2014
8	Moore Complaints	Misc. dates
9	Letter to Ms. Stafford	July 23, 2019
10	Email to Ms. Stafford	Aug 7, 2019
11	Email Chain to Ms. Stafford	Aug 7 – 16, 2019
12	Email Chain from Ms. Koler	Sep 9 – 10, 2019
13	Notice of Hearing	09/11/2019
14	Staff Report & Recommendation for Revocation – Hearing Continued, then Withdrawn	09/19/2019
15	Compliance Agreement	01/09/2020
16	Email – D. Lynam RE Recap Conversation with FPF Contractor R. Prior	06/02/2020
17	Statutory Warranty Deed, to Timothy and Paula Olcott	09/14/2020
18	Notice of Hearing	09/23/2020
19	Staff Report & Recommendation for Revocation	09/30/2020

Review Authority

The Hearing Examiner has review authority for Conditional Use Permit Revocation under KCC 17.600 *Revocation of Permits and Variances* and 21.04.280 *Revocation of Approval*.

Recommendation

Based upon the analysis above, revocation criteria found in KCC 17.600 and 21.04.280, unmet provisions of the compliance agreement, the Department of Community Development recommends that the CUP 07-49177 be revoked in its entirety.

Report prepared and approved by



and signed for David Lynam

 Scott Diener, Manager, Development Services and Engineering
 David Lynam, Fire Marshal, Building and Fire Services

9-30-20
 Date

CC: Owner/Applicant: Timothy A. & Paula May Olcott, olcott@icloud.com
 County Representative: Laura Zippel, lzippe@co.kitsap.wa.us

DCD

DSE

Interested Parties:

Tina Stafford (Previous Owner/Original Applicant) fourpawfun@msn.com

James Carmody, carmody@mftlaw.com

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Trish Bittman, trish@crosssoundlaw.com

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