



Notice of Hearing Examiner Decision – Revocation

11/02/2020

To: Interested Parties and Parties of Record

RE: Project Name: Four Paw Fun Dog Training
Applicant: Timothy A. & Paula May Olcott
23614 212th Avenue SE
Maple Valley, WA 98038
Application: Conditional Use Permit (CUP)
Permit Number: 07-49177

The Kitsap County Hearing Examiner has **REVOKED** the land use application for **Permit # 07-49177 Four Paw Fun Dog Training Conditional Use Permit (CUP)**, as outlined in this Notice and included Decision.

THE DECISION OF THE HEARING EXAMINER IS FINAL, UNLESS TIMELY APPEALED, AS PROVIDED UNDER WASHINGTON LAW.

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

<https://spf.kitsapgov.com/dcd/HEDocs/HE-Rules-for-Kitsap-County.pdf>

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 through 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: Owner/Applicant: Timothy A. & Paula May Olcott, olcott@icloud.com;
blkonwht@olypen.com

County Representative: Laura Zippel, lzippe@co.kitsap.wa.us
DCD/DSE

Interested Parties:

Tina Stafford, fourpawfun@msn.com; James Carmody,
carmody@mftlaw.com; Cindy and Michael Moore,
moore123.1@wavecable.com; Trish Bittman, trish@crosssoundlaw.com
Dee Boughton, Dee@crosssoundlaw.com

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

**Conditional Use Permit Revocation Request
CUP No. 07-49177
Four Paw Fun Dog Training & Equipment, LLC**

October 29, 2020

1. FINDINGS OF FACT

1.1 Revocation Request. Kitsap County Department of Community Development (“DCD”) requested revocation of CUP No. 07-49177, which authorized a commercial dog training facility.

1.2 Applicant/Property Owner.

Current Owner. Timothy and Paula Olcott, 23614 212th Avenue SE, Maple Valley, WA 98038.

Previous Owner. Tina Stafford, Four Paws Fun, 10680 Ridge Rim Trail SE, Port Orchard, WA 98367. James Carmody, Meyer, Fluegge & Tenney, PS, 230 South 2nd Street, Suite 101, P.O. Box 22680, Yakima, WA 98907.

1.3 Location. 10680 Ridge Rim Trail SE, Port Orchard, WA. Assessor No. 262301-2-027-2003.

1.4 Hearing. An open record public hearing was held October 8, 2020. Due to COVID-19 restrictions, the hearing was conducted remotely, with the Examiner, DCD, and permit holder afforded an opportunity to call in. Access information was also provided to the public to allow citizens to join via either a video link or telephone call-in. There were no reported technical difficulties during the call or afterwards. However, in case any citizens who wished to comment had difficulty calling in, the record was kept open for a week, through October 15.¹ No comment was received following the hearing. DCD, the new property owner, a neighbor, and her counsel, all testified at the hearing.

1.4.1 Hearing, DCD Presentation. DCD, through Mr. Diener and Mr. Lynam, described the revocation request and enforcement background. The presentation included a Power Point with photographs of the site, and details on the CUP violations. DCD recommended CUP revocation.

1.4.2 Hearing, Property Owner Testimony. The property changed ownership in September, 2020. Ms. Olcott, the new owner, stated she is the new property owner and would be taking possession of the property on October 14, 2020, at 5 PM. She stated she did not have a

¹ Temporary Emergency Rule to Address COVID-19 Situation (April 1, 2020).

dog training business. She intends to use the arena to train her own dogs (she has two), and would allow friends to visit and use the arena, but it is not her intent at this point to operate a commercial dog training program. If she elected to start a dog training business, she and her husband would secure a new permit. She did not object to CUP revocation.

1.4.3 Public Comment. Ms. Moore provided sworn testimony in support of CUP revocation. She lives adjacent to the site with her husband. She emphasized the severe challenges she has faced due to use impacts, which have had dramatic impacts on surrounding properties. She expressed appreciation to DCD for its work in addressing these issues. Her counsel, Mr. Boughton, also spoke. He confirmed his clients' comments had been admitted (Exhibits 21-25), which provide visual details, including through video and photograph, written detail, and copies of animal control complaints. His client would have further detailed condition violations, but the added information was unnecessary given there was no objection to CUP revocation from the former or present property owners.

1.5 Administrative Record. The Hearing Examiner admitted Exhibits 1-26, which included the Staff Report, application materials, documentation of public notice, DCD Power Point presentation, and public comment.

1.6 Public Notice and Comment. Hearing and application notice was provided consistent with KCC requirements.² Extensive public comment was provided by Mr. and Ms. Moore, including video documentation of the noise impacts.

1.7 Compliance Background. CUP compliance has been an ongoing issue. The property transferred to new owners (Mr. and Ms. Olcott) on September 14, 2020.³ To allow DCD the opportunity to confer with the new owners, the originally scheduled September 24, 2020, hearing was cancelled, and the matter was rescheduled for the following month. Besides the written notice to the new owners (Exhibit 18), DCD notified Mr. Olcott by telephone and discussed the permitting issues with him.

Before this property transfer, Ms. Stafford operated a dog training center called Four Paws Fun at 10680 Ridge Rim Trail SE, Port Orchard, WA, a site zoned Rural Residential. The business utilized an arena and adjacent grounds for dog training classes, a use approved by CUP in 2008. CUP and environmental review conditions imposed through the Mitigated Determination of Non-Significance addressed noise and dust impacts. The CUP and SEPA conditions required construction of an enclosed or indoor arena and other measures to address these issues. Beginning in 2019, DCD began receiving complaints from neighboring property owners, Mr. and Ms. Moore, about noise from training events. Revocation proceedings were commenced, but instead of going to hearing, a Voluntary Compliance Agreement was executed between DCD and the original property owners on January 9, 2020.

The Agreement required arena enclosure (a key issue for addressing noise) and development of a secondary access to mitigate fire flow requirements to address CUP requirements. Other permitting requirements were detailed, including submission of a Site

² Exhibit 19 (Staff Report), p. 4; Exhibit 18; KCC 21.04.280(B) and .210.

³ Exhibit 17.

Development Access Permit, per KCC Title 12. Only one of the required permits was timely applied for, and various Agreement deadlines were not met. It was not disputed that the CUP, SEPA conditions, and Voluntary Compliance Agreement had not been complied with.

1.8 Staff Report. The DCD Staff Report details these violations and the compliance history. It is incorporated by reference into these Findings.

2. CONCLUSIONS OF LAW

2.1 Hearing Examiner Jurisdiction. The Hearing Examiner originally issued the CUP and has authority to hear and decide this CUP revocation request. “The hearing examiner shall hold a hearing on any proposed revocation after giving written notice to the permittee and/or owners of property consistent with Section 21.04.210.”⁴

2.2 Revocation Criteria. A CUP may be revoked if either ground is established:

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;

The use for which the approval or permit was granted was so exercised as to be detrimental to the public health or safety, or to constitute a nuisance.⁵

Both situations apply. CUP conditions have been violated, and with the continual and unmitigated dog barking, the use has been operated in a manner detrimental to the public health and created a nuisance.

2.3 Other Requirements – SEPA and Voluntary Compliance Agreement. SEPA conditions from the MDNS and requirements in the Voluntary Compliance Agreement were also violated. SEPA mitigation conditions may be enforced “in the same manner as any term or condition of the permit. ...”⁶ And, if its terms are violated, the Agreement provides for resumption of the revocation proceedings.

2.4 Lack of Objection. No party, including the former property owner and original permit holder, or the present property owner, objected to revocation. The CUP meets the revocation criteria and should be revoked.

⁴ KCC 21.04.280(B); Ch. 17.550 KCC (Hearing Examiner conditional use permitting procedures).

⁵ KCC 21.04.280(A)(3) and (4).


⁶ KCC 18.04.120(D).

DECISION

CUP 07-49177 is revoked. If the new property owner wishes to operate a similar facility, new permitting under County Code would be required.

Absent a timely appeal, this Decision is final.⁷

DECISION entered October 29, 2020



Kitsap County Hearing Examiner
Susan Elizabeth Drummond

⁷ See Ch. 36.70C RCW (any appeal to be filed within 21 days to superior court).