

WHATCOM COUNTY HEARING EXAMINER

re: The application of **Ken and Charmae Scheffer and Sydney Scheffer** for a Zoning Conditional Use Permit

CUP2017-0017

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DECISION

“Rover Stay Over”

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting a Zoning Conditional Use Permit to allow boarding of up to 150 dogs in addition to the 15 U.S. Customs and Border Protection [CBP] Detector Dogs as approved under CUP2016-0002. The Applicant is seeking approval pursuant to WCC 20.40.165(1-6)-Commercial Kennels, designed, and operated so as not to interfere with the overall agricultural character of the area, located at 6451 Hannegan Road, Lynden, Washington.

Decision: The requested Zoning Conditional Use Permit is approved, subject to conditions.

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted and evidence presented at the public hearing.

FINDINGS OF FACT

I.

Applicants: Ken, Charmae, and Sydney Scheffer

Site Location/Address: 6451 Hannegan Road
Lynden, WA 98264

Assessor's Parcel Number(s): 390317 496480

Zoning: Agriculture [AG]

Comprehensive Plan: Agriculture [Resource]

Subarea: Lynden

Total Acreage: Approximately 4.66 acres

Roads: Public

Water Supply: Private well

Sewage Disposal: Septic system

Fire Protection: North Whatcom Fire and Rescue

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Lynden School District

Vegetation: Vegetated with single-family residential landscaping and pasture.

Adjacent Land Uses:

North:	Agricultural
East:	Residential/Agricultural
South:	Agricultural
West:	Agricultural

Authorizing Codes, Policies, Plans, and Programs

State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11
 Revised Code of Washington Chapter [RCW] 36.70B, Local Project Review
 Whatcom County Comprehensive Land Use Plan
 Whatco County Code (WCC) 2.11, Hearing Examiner
 WCC 12.08, Development Standards
 WCC 14, Use of Natural Resources
 WCC 15, Building Code
 WCC 16.08, Whatcom County Environmental Policy Administration
 WCC 16.16, Critical Areas
 WCC Title 20, Official Whatcom County Zoning Ordinance
 WCC Title 22, Land Use and Development Procedures
 WCC Title 24, Health Regulations

Legal Notices: Notice of Application & Public Hearing, July 29, 2020
Published Notice of Public Hearing, July 30, 2020
Mailed Notice of Public Hearing, July 24, 2020
Certificate of Posting Notice of Public Hearing, August 6, 2020

Hearing Date: August 12, 2020

Parties of Record

Ken, Charmae, and Sydney Scheffer
6451 Hannegan Road
Lynden, WA 98264

Jaime White
Whatcom Land Use Consulting
220 West Champion Street, Suite 270
Bellingham, WA 98225

Amy Keenan, Senior Planner
Planning and Development Services

Sanja Barisic
Public Works & Engineering

Exhibit List

1. Master Application
2. Project Narrative
3. Preliminary Traffic Information Application
4. Stormwater Proposal Application
5. Revocable Encroachment Permit
6. SEPA Checklist & MDNS
7. Deed, Easements & Supporting Documents
8. Customer Receipt
9. Fee Responsibility

10. Agent Responsibility
11. Site Plans
12. Vicinity Map
13. Water Information
14. Sewer/Septic Permit
15. Determination of Completeness
16. Agency Distribution List
17. Notice of Application
18. Legal Notice - Bellingham Herald and published notice from Bellingham Herald
19. Mailing Labels and Signed Certificate of Mailing
20. Agency Comments
21. Public Comments
22. Interested Parties
23. landscape plan
24. Trip generation traffic letter
25. Traffic impact and concurrency analysis
26. Parking analysis
27. Hearing Examiner Decision CUP2016-000 US Customs and Border Patrol Detector Dogs
28. Approved Civil Drawings (COM)
29. Approved Revised Building Permit (COM)
30. Staff Report

II.

The Applicants seek approval for a Zoning Conditional Use Permit for a commercial kennel to board up to 150 household pets with accessory uses such as training and grooming. The facility has proposed to offer day-care options limited to 22 dogs per day.

The Applicants also seek approval to utilize the existing 6850 sq. ft. building for the commercial kennel. A future 450 sq. ft. office addition is proposed. The existing building will continue to house the boarding of fifteen US Customs and Border Patrol [CBP] detector dogs permitted through CUP2016-0002. The Applicants also seek approval pursuant to WCC 20.40.164(1-6) – Commercial Kennels, designed, and operated so as not to interfere

with the overall agricultural character of the area.

The Land Use Division of Whatcom County Planning and Development Services Staff recommended approval of the requested Zoning Conditional Use Permit, subject to conditions. The Findings of Fact and Conclusions of Law are set forth in a Staff Report, Exhibit No.30, dated July 31, 2020, in the Hearing Examiner's file. The Applicants stated that the factual information in the staff report was accurate and that the Applicants had no objections or concerns with the recommended Conditions of Approval in the staff report.

There was no public comment or testimony in this matter at the hearing. During the Public Comment period, concerns were raised regarding increase in traffic, noise levels, not appropriate for the AG zone, and concerns regarding enforcement of conditions. All these concerns were addressed by Staff in the Staff Report.

The Hearing Examiner finds that the factual findings set forth in the Staff Report, a copy of which is attached hereto, are supported by the record as a whole and are incorporated as Findings of Fact herein by this reference.

III.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following

CONCLUSIONS OF LAW

I.

The proposed Application for the Zoning Conditional Use Permit can be approved if consistent with the Zoning Conditional Use Criteria of WCC 20.84.220 (1 through 9). Subject to the Conditions of Approval attached to the granting of this Permit Decision, the proposal is consistent with the Conditional Use Criteria, as found by the Technical Review Committee in the attached Staff Report. A Zoning Conditional Use Permit should be

granted, subject to the Conditions of Approval recommended by the Technical Review Committee.

II.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following

DECISION

A Zoning Conditional Use Permit is hereby granted to Ken, Charmae & Sydney Scheffer to allow boarding of up to 150 dogs in addition to the 15 U.S. Customs and Border Protection [CBP] Detector Dogs, located on Assessor's Parcel No.390317 496480, addressed as 6451 Hannegan Road, Lynden, Washington, subject to the following conditions:

Current Planning

1. The use and location on the site as approved by this permit, as shown on the site plan floor plan dated December 2019 and the approved civil drawings dated April 2019. The use and location shall not be amended or revised in any way without further approval of the Hearing Examiner.
2. This CUP is supplemental to and does not replace CUP2016-00002 US Customs and Border Protection. All conditions of approval associated with that CUP are still applicable and enforceable.
3. Building Permit Required. A commercial building permit is required for the unpermitted (west) building and a tenant improvement permit is required to formally convert the existing (east) building. Additional building permits may be required, as determined at the building permit pre-application or prescreen review.
4. The Applicant shall have no more than 15 US Customs and Border Protection dogs at any time. Non-Customs and Border Protection dogs, other than those owned by the family, shall not be housed, boarded, groomed or trained at the facility.
5. The Applicant shall have no more than 150 household dogs onsite (including dogs for day care or grooming). No more than 22 dogs per day shall be onsite for day-care purposes.
6. A maximum of four employees other than family members may be employed in the operations of the facility.

7. The dogs shall not have outdoor access from the hours of 8PM to 6AM.
8. The Applicant shall obtain a Land Disturbance Permit for the proposed site development work (unless submitted as part of the building permit application).
9. Should archaeological materials (e.g. shell midden, faunal remains, stone tools) or human remains be observed during project activities, all work in the immediate vicinity shall stop, and the area shall be secured. The State Office of Archaeology and Historic Preservation (360-586-3065) and the Lummi Nation Tribal Historic Preservation Office (360-384-2298) shall be contacted immediately in order to help assess the situation and determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.
10. Pursuant to WCC 20.84.210 Conditional Use Permits shall be nontransferable unless said transfer is further approved by the Hearing Examiner.
11. At no time shall the business operate until a Certificate of Occupancy has been issued by the Whatcom County Planning and Development Services, Department of Building Services.
12. Pursuant to WCC 22.05.140(1) Expiration of project permits, the project permit approval status shall expire two years from the date of approval. The decision maker may extend this period up to one year from the date of original expiration upon written request by the applicant if requested prior to expiration.

SEPA Conditions

13. **NOISE:** No development shall exceed the maximum environmental noise level established by Chapter [173-60](#) WAC. More rigorous standards may be specified in regulations of specific zoning districts. The use of exhaust brakes in residential areas may be restricted as authorized under the provisions of RCW [36.75.270](#) and [46.44.080](#).

The buildings shall be insulated to control sound to industry standards for the boarding of dogs. The Applicant is required to ensure that sounds related to the facility, at a minimum, comply with the Class A Residential source to Residential Receiving Property Standards of WAC 173-60-040. Additionally, the Applicant is required to submit a Sound Attenuation Plan. The purpose of the Plan is both to help design the indoor area to attenuate sound to the greatest degree reasonably possible.

14. **FIRE PROTECTION AND CONCURRENCY:** Whatcom County Code 20.80.212 requires that a written finding be made that providers of fire protection serving the development issue a letter that adequate capacity exists or arrangements have been

made to provide adequate services for the development. With the adoption of Ordinance No.2009-071 the Whatcom County Comprehensive Plan officially incorporates the Whatcom County Fire District #21 Capital Facilities Plan and associated fee schedule.

At the time of application for any building permits as contemplated by this proposal, the Applicant shall submit a letter of concurrency pursuant to WCC 20.80.212.

15. **TRAFFIC MITIGATION:** The applicant is required to mitigate impacts of the development on intersections within Whatcom County. Based on the Traffic Analysis submitted by the applicant on August 22, 2019 the applicant is required to mitigate for impacts at the intersection of Hannegan Road and Smith Road.

The applicant shall provide \$3,315.00 to the Whatcom County Public Works Department as a proportionate share of the cost for improvements at the intersection of Hannegan and Smith Roads. The contribution shall occur prior to the issuance of the tenant improvement permit on the existing building.

Public Works - Engineering Services

16. All Development shall comply with the Whatcom County Development Standards (WCDS).
17. Preliminary Stormwater Report (SSP) prepared by licensed civil engineer (Freeland & Assoc.) was submitted, reviewed, and accepted for the CUP application. However, **Final Stormwater Report** including details, calculations and drainage design site plan shall be submitted with building permit application for the final approval and prior to any construction.
18. Certified Record Drawings (as-built) for the installation of any new drainage system/facility shall be provided and approved by the PW Engineering Services upon construction completion, inspection, and prior to any Certificate of Occupancy.
19. As per Chapter 2, Sec. 205 (9) and (11), the applicant shall post a Warranty Security with the PW Engineering Services for all new drainage facilities installed. The warranty monetary value shall be based on engineer's cost estimate and equal to \$5,000, or 10% of the approved cost estimate, whichever is greater. The security shall be in effect for 2 years from the date of provisional acceptance of newly constructed drainage facilities and receiving final Record Drawings.
20. Pursuant to DOE 2012/14 Manual, Vol. I, Chapter 3, applicant shall complete and record a **Declaration of Covenant and Grant of Easement** for the stormwater maintenance purposes. Document is required to be recorded prior to issuance of any Certificate of Final Occupancy.

21. The applicant shall obtain a Revocable Encroachment Permit from the Engineering Services prior to the onset of any construction in the County Right of Way. The existing access shall be verified for any change of use and additional traffic generated from the subject site.
22. Interior traffic circulation shall be designed as per Fire Marshal requirements and WC Development Standards.
23. All roads, stormwater facilities, and grading plans shall be designed and stamped by a Washington State Licensed Civil Engineer and submitted for county engineering review and approval prior to construction.
24. All appropriate permits must be obtained before construction. Obtaining a county permit does not replace or over-ride other state and federal statutes and regulations that may apply to this project.

Building Services

25. A commercial building permit is required for this project. It will be reviewed under the current adopted edition of the International Building Code (IBC) and must comply with all other applicable codes and ordinances adopted by Whatcom County.
26. A pre-application screening meeting will be required prior to submittal of a commercial building permit application.

Fire Marshal's Office

27. Fire Area of enclosed buildings must be less than 2,500 square feet in size, due to lack of fire flow. Please review building 1 and 2 as the addition may put the building over 2500 square feet.
28. Fire Walls that meets the International Building Code without opening are required per the International Fire Code Appendix B104.2. (B104.2 Area separation. Portions of buildings which are separated by *fire walls* without openings, constructed in accordance with the *International Building Code*, are allowed to be considered as separate fire-flow calculation areas.)
29. A separate fire permit is required for the electronic gate per WCC 15.04.040 Section D103.5 to be submitted to WCFMO for review. Site plan, openable width, and gate controls are required to be shown in the permit.
30. Fire extinguishers shall be installed and meet IFC Chapter 906 requirements.
31. Water availability or updated water testing may be required at the time of building permit application.

32. The applicant must demonstrate adequate sewage disposal capacity for the proposed project. The property has two approved on-site sewage systems (OSS) permits; one for the primary residence and one for the dog kennel business. The dog kennel OSS was designed with extra capacity. However, the proposed project expansion appears to meet the definition of an OSS expansion. The applicant has also shown what appears to be a laundry facility in the proposed 7,380 square foot building.
33. Any foundational supports for the proposed covered dog run must be at least 5 ft. from the edge of the septic tank.
34. The applicant will be required to provide a current ROSS (Report of System Status) of the septic system performed by an Operation and Maintenance Specialist at the time of building permit application. As required by the septic permit approval conditions, the applicant will also be required to provide current wastewater sampling for TSS (Total Suspended Solids), BOD (Biological Oxygen Demand), O&G (Oil and Grease).
35. Any non-residential wastewater generated on site cannot be directed into the OSS system. The applicant has stated that the non-residential wastewater will either be held in a holding tank and pumped out regularly by a licensed pumper or apply for a NPDES (National Pollution Discharge Elimination System) permit to discharge the wastewater on-site. Proof contract for regular pumping must be provided at the time of building permit.
36. Animal wastes generated by the proposal must be disposed of properly. Because of the significant increase in the number of dogs proposed, the applicant must provide an updated contract or letter from a waste disposal company for the collection and disposal of dog waste at the time of building permit application.

Signs

37. The applicant is proposing two signs. A 45.5 square foot wall sign to be placed on the east facing of the building and 19 square foot sign to be placed at the entrance near Hannegan Road (see sign installation drawing dated 7/31/2020). A building permit must be submitted showing the size and location of the proposed sign.

NOTICE

This Approval is subject to all of the above-stated conditions. Failure to comply with them may be cause for its revocation. Complaints regarding a violation of the conditions of this permit should be filed with Whatcom County Planning and Development Services. The Hearing Examiner may not take any action to revoke this approval without further public hearing. Violations of this title shall constitute Class I civil infractions pursuant to RCW

7.80.120. The maximum penalty and the default amount for such violations shall be consistent with Chapter 7.80.RCW.

NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF
THE WHATCOM COUNTY HEARING EXAMINER

This action of the Hearing Examiner is final.

The applicant, any party of record, or any county department may appeal any final decision of the hearing examiner to Superior Court or other body as specified by WCC 22.05.020. The appellant shall file a written notice of appeal within 21 calendar days of the final decision of the hearing examiner, as provided in RCW 36.70C.040.

More detailed information about appeal procedures is contained in the Whatcom County Code Title 22 and Title 23.60 and which is available at <http://www.codepublishing.com/WA/WhatcomCounty>.

DATED this 18th day of August 2020.



Rajeev Majumdar, Hearing Examiner *Pro Tem*