

WHATCOM COUNTY HEARING EXAMINER

RE: Administrative Appeal) APL2020-0004
)
)
Ken and Charmae Scheffer, Appellant) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPEAL AND DECISION

Appeal: The Appellants are appealing the County's interpretation that boarding Customs & Border Patrol [CBP] dogs in the Rural District does not require a special Conditional Use Permit [CUP] under WCC 20.36.151.

Decision: The Hearing Examiner modifies the Code Interpretation and denies the Appellants request to find boarding Customs & Border Patrol dogs in the Rural District requires a special Conditional Use Permit as a Public Use Facility issued pursuant to WCC 20.36.151.

Hearing Date: January 21, 2021

Parties of Record

Ken and Charmae Scheffer, Appellants
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Royce Buckingham
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Mark Personius, Planning Director
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Exhibits List

01. Code Interpretation request
02. Code Interpretation receipt
03. Code Interpretation – signed
04. Appeal Application
05. Appeal Application receipt
06. Appellant Brief
07. Appellant Exhibits

A - Emails Exchanged between CBP and Planning Personnel between June 18 and September 10, 2020

B - Pertinent Excerpts of Staff Report Regarding CUP2016-0002

C - Emails between T. Kennedy and J. White between August 31 and October 14, 2020

D - September 2, 2020, Request for Code Interpretation

E - September 22, 2020, Code Interpretation Issued by Planning Department

F - Appeal of Code Interpretation (with some attachments omitted)

G - September 11, 2020, email from Nick Smith to Amy Keenan

H - Ordinance 2005-079 and the revised/interlineated WCC 20.97.191 definition adopted thereby

I - Ordinance 2017-030 and Exhibits I and S showing amended definitions; Exhibit to AB2017-169, the Agenda Bill for the Ordinance's development and discussion, showing the revisions with interlineated deletions and additions

08. D. Traxler Declaration

09. County Brief

10. Appellant-reply-brief

11. Agenda Bill – Legislative History for ORD2005-079

11. APL2014-0007-8-9–HE Decision

12. CUP2016-0002–HE Decision

13. CUP2017-0017-HE Decision

14. Bobbink Email 2.2.2021

FINDINGS OF FACT

II.

The Appellants requested a code interpretation under WCC 22.20.020 as to whether a Public Facilities CUP under WCC 20.36.151 and 20.40.151 is required to board CBP detector dogs in the Rural and Agriculture Districts, stating, "...we are formally requesting a code interpretation, pursuant to WCC 22.20.020 complete with appeal rights under WCC 22.20.060, as to whether the boarding of CBP detector dogs, including the provision of gated, secure parking for CBP vehicles and CBP officers' personal vehicles, can be conditionally permitted under WCC 20.36.156 and WCC 20.40.165, or whether the use must go through conditional permitting under WCC 20.36.151 and WCC 20.40.151 as a public facility.

The Director of Planning and Development Services phased the request as follows:

"Interpretation of the following item has been requested: Can CBP dogs be boarded at a kennel" in Whatcom County or are CBP dogs required to be boarded in a public/community facility?"

This wording broadens the request to include all zoning districts where kennels are allowed. That is appropriate considering the factors the Director is required to consider under WCC 22.20.040, and it does answer the questions posed by the Appellants'.

To better understand the issue posed, some background information is helpful. The Appellants' herein applied for and obtained a conditional use permit allowing the construction and operation of a commercial dog kennel to house working dogs owned and operated by the United States Customs and Border Patrol (CBP) in 2016 (exhibit 30). The

Appellants' property is zoned Agriculture. At the time their conditional use permit was approved a Kennel was not an allowed use in the AG zone. The conditional use permit granted allowing the CBP dog kennel was instead approved as a Public Facility, which was, and still is, allowed as a conditional use in the Agriculture zone pursuant to WCC 20.40.151, which reads as follows:

.151 Public facilities for emergency-related health and safety purposes, such as fire halls and Washington State Department of Transportation satellite road safety facilities.

The Hearing Examiner Decision granting the Appellant's Conditional Use Permit, in CUP 2016-0002, issued on October 2, 2016, summed up the central issue in that particular CUP in the Conclusions of Law, as follows:

"Opponents to the proposed facility argue that the facility cannot be approved pursuant to WCC 20.40.151. This section allows certain public facilities to be located in the Agriculture zone as a Conditional Use. It reads as follows:

20.40.151 Public facilities for emergency-related health and safety purposes, such as fire halls and Washington State Department of Transportation satellite road safety facilities.

The Technical Review Committee concluded that the proposed facility for the kenneling of working dogs and providing parking for the officers' personal and work vehicles can be approved as a Conditional Use under WCC 20.40.151.

The Technical Review Committee's reasoning is set forth in the Staff Report, pages 4-6.

Legal briefs on the issue were submitted by both the Applicant and a neighboring property owner opposed to the proposed facility.

The Hearing Examiner concurs with the reasoning of the Technical Review Committee and concludes that the proposed Customs and Border Protection Facility can be approved as a Conditional Use under WCC 20.40.151. The proposed facility is quite similar in nature and function to the public facilities specifically identified as public facilities for emergency related health and safety purposes in the Section, such as fire halls and Washington State Department of Transportation satellite road safety facilities. All three are government facilities and all have some first responder responsibilities in rapidly evolving emergent situations. The CBP is a law enforcement agency and is certainly involved in issues of public safety. The proposal is similar to a satellite Sheriff's Office which clearly would be allowed to apply for a Conditional Use Permit under this Section of the County Zoning Code.

The Hearing Examiner is cognizant of the ongoing controversy surrounding this site and illegally established uses and building construction. However, those matters are not before me and this Application must be decided on its merits, apart from ongoing enforcement activity. Since this specific facility, serving the CBP, falls within the parameters for one of the Conditional Uses allowed in the AG zone, if it meets the Conditional Use Criteria, the Applicants are allowed to request such a Permit.

Conclusions of Law

II

The proposed Application to board up to 15 United States Customs and Boarder Protection [CBP] detector dogs, including a secure, fenced parking area for CBP vehicles and CBP employees' personal vehicles, can be approved if it is 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.

The Staff Report, exhibit # 2 in the file of CUP 2016-0002, included a discussion of Staff's interpretation of what the result would have been if kennels were an allowed use in the Agriculture zone. Staff opined as follows:

"through review of public comment staff received several statements Regarding whether the proposed use would be considered a kennel as defined by WCC 20.97.191:

WCC 20.97.191 Kennel.

"Kennel" means a commercial establishment in which five or more dogs, cats, or other household pets are housed, groomed, bred, boarded, trained or sold for a fee or compensation. (Ord. 2005-079 § 1, 2005; Ord. 99-086, 1999).

In review of WCC 20.97.191, the CBP dogs are not considered household pets, they are trained dogs that are boarded in a facility. The Merriam-Webster online dictionary defines a pet as "a domesticated animal kept for pleasure rather than utility." These dogs are not being kept for pleasure by owners, but are dogs owned by CAP and trained to assist law enforcement. As conditioned, this CUP will not allow for general public use of the facility for grooming, breeding, boarding or training

of non-CBP dogs or other animals.

Furthermore, the proposed boarding facilities require a location for secure, fenced parking for employees, as well as CBP vehicles. Kennels generally include parking for employees and drop off and pick up of animals. The secure fenced nature of the parking requirement is distinct to this use.

Pursuant to the above analysis it is staff's opinion that the proposed boarding of 15 CBP dogs and a secure parking area is appropriately considered to fall under WCC 20.40.151.

The conclusion reached by the Technical Committee that the CBP dogs could not be boarded in a kennel, as defined in WCC 20.97.191, was dicta (A remark, statement, or observation of that is not a necessary part of the legal reasoning needed to reach the decision in a case), and since kennels were not allowed in the Agriculture zone at that time, was not addressed in the Decision of the Hearing Examiner. (The appellants assert in their briefing that this interpretation originated in a 2020 memo written by Nick Smith. This is clearly incorrect.)

The Appellants' agree with this interpretation of WCC 20.97.191 but argue that the WCC 20.97.191 definition governs the boarding of dogs throughout the County regardless of the different language used in outlining specific kennel Conditional Uses in the various zones. The Director's Code Interpretation accepts the argument that the definition of kennel only allows animals that are actual household pets can be boarded in a kennel stating as follows:

"The Agricultural (AG) zone is specific to the boarding of "household pets," per WCC20.97.191. Specific to the definition in WCC 20.97.191, kennels may only board "household pets" in the AG zone (unless they

are also a public/community facility associated with a public agency).”

but concludes that the varying descriptive language used with the word kennels in the various zones expands or modifies what is actually allowed in each zone as a kennel. The Director concludes that only the Conditional Use allowing kennels in the Agriculture zone is limited to actual household pets, even though the statutory definition of kennel in WCC 20.97.191 applies anywhere it is used in Chapter 20. The Appellants, Staff and the Director agree that only animals who are household pets at the time of their boarding can be boarded in a kennel in the Agriculture Zone. The Appellants further argue that this limiting interpretation in the definition of kennel in WCC 20.97.191 limits kennels authorized anywhere in WCC Chapter 20, the Zoning Code to animals that are actual pets.

The Appellants were actually granted a Conditional Use Permit, CUP 2016-0002, as a Public Use Facility because kennels were not a use allowed in the Agriculture zone at the time of their application. The fact that the CBP dogs were not pets played no role in the approval of the Conditional Use Permit.

III.

After obtaining their CUP for the kenneling of CBP dogs in 2016, the Appellants sought a Zoning Code Amendment asking that kennels be allowed as a conditional use in the Agriculture zone. This request was properly noted and went before the Planning Commission where it was strongly objected to by nearby property owners. The request was ultimately sent to the Whatcom County Council with a Planning Commission recommendation to not approve it, apparently based on the numerous code violations previously committed by the Appellants, and the heated opposition of nearby property owners. The Whatcom County Council Approved the request to allow kennels as a Conditional Use in the Agriculture zone with a number of limitations on kennel use specific

to the Agriculture zone, including a directly stated requirement that the use be limited to that set forth in WCC 20.97.191, which currently defines a kennel as follows:

20.97.191 Kennel.

“Kennel” means a commercial establishment in which five or more dogs, cats, or other household pets are housed, bred, or boarded for a fee or compensation. A kennel may include grooming and/or training as accessory uses. (Ord. 2017-030 § 1 (Exh. I), 2017; Ord. 2005-079 § 1, 2005; Ord. 99-086, 1999).

The word kennel has been part of named conditional use in certain zones in the Zoning Ordinance since at least 1987 (i.e. “Animal kennel”).

Whatcom County first defined “kennel” with the adoption of Ordinance 14 99-086 on December 7, 1999, as follows:

20.97.191 Kennel. “Kennel” means a commercial establishment in which 5 or more dogs or domesticated animals are housed, groomed, bred, boarded, trained, or sold for a fee or compensation.

The Council modified the definition effective October 25, 2005, as follows:

‘Kennel’ means a commercial establishment in which five or more dogs, cats, or other household pets are housed, groomed, bred, boarded, trained or sold for a fee or compensation.”

In his formal Code Interpretation, the Director looked at the actual descriptive words used to list a kennel as a Conditional Use in each zone and concluded as follows:

Kennels are allowed in many zones in Whatcom County as either a permitted or conditional use. Kennels are defined in WCC 20.97.191 as: “a commercial establishment in which five or more dogs, cats, or other household pets are housed, bred, or boarded for a fee or compensation. A kennel may include

grooming and/or training as accessory uses."

Kennels as a use are further modified with unique use descriptions and standards in different zones:

WCC 20.36.156 (Rural) Commercial kennels and stables intended for the boarding or training of domestic animals.

WCC 20.40.165 (Agriculture) Commercial kennels, as identified in WCC 20.97.191, which shall be located, designed, and operated so as not to interfere with the overall agricultural character of the area....

WCC 20.61.201(3) (Small Town Commercial) Animal kennels not associated with a veterinary practice.

WCC 20.62.155 (General Commercial) Animal Kennels.

The Small Town Commercial (STC) and General Commercial (GC) zones allow "animal kennels." All animals may be boarded in these zones.

The Rural (R) zone includes a distinct use description by including boarding of "domestic animals." Five or more "domestic animals," regardless of breed or type of animal, is considered a kennel in the R zone.

The Agricultural (AG) zone is specific to the boarding of "household pets," Per WCC 20.97.191. Specific to the definition in WCC 20.97.191, kennels may only board "household pets" in the AG zone (unless they are also a public/community facility associated with a public agency). Whether CBP Dogs must be boarded in a public and community facility? Brief Answer: No. CBP dogs may be boarded at a public/community facility or at a kennel that is allowed to board "animals" or "domestic animals." (bold emphasis added).

Public/community facilities are a commonly found use in zones including Rural Residential (WCC 20.32.151), Rural (WCC 20.36.151) and Agriculture (WCC 20.40.151)).

The description of a public/community facility is found in each zone, as follows: "Public and community facilities including police and fire stations, libraries, community centers, recreation facilities, and other similar noncommercial uses, excluding correction facilities."

Boarding of CBP dogs, as well as other dogs or animals used for a public safety purpose including police and search and rescue dogs, may be considered under the public and community facility use. Dogs boarded under the public and community facility use must be owned by a public agency (CBP, Sheriff's Department, State Patrol, etc.).

CBP dogs may also be boarded in zones where "animal" or "domestic animal" kennels are allowed. CBP dogs are not household pets. CBP dog kennels are not allowed in the AG zone unless they are a public/community facility.

It should be noted that, if care of CBP dogs does not fit within the conditions of an existing CUP (for example: the number of dogs exceeds existing CUP conditions, additional parking, new structures, etc.), a-revision to the existing CUP or additional permitting might be necessary.

Pursuant to WCC 22.20.060, this formal code interpretation may be appealed to the Whatcom County Hearing Examiner within 14 calendar days from the date of this letter, along with a complete form from this office, applicable fees, and a statement including tangible evidence substantiating the appeal."

IV

This appeal followed.

All parties correctly agree that the legislative history of the use of the word kennel as a conditional use is relevant to the Code Interpretation process and there is a substantial amount of legislative history available in this record. It can be summarized as follows:

The word kennel appears in the zoning ordinance in **1987** as part of a conditional use allowed in the Rural zone and the General Commercial District, as follows:

RURAL

20.36.156 "Private kennels and stables intended for the boarding, propagation or training of domestic animals."

GENERAL COMMERCIAL

20.61.201.1 "Animal kennels."

In 1996 WCC 20.36.156 was modified in a code scrub in Ordinance 96-059.

*"ORDINANCE NO. 96-056 ..
AN ORDINANCE AMENDING THE OFFICIAL WHATCOM COUNTY ZONING
ORDINANCE, TITLE 20, AND THE OFFICIAL WHATCOM COUNTY SUBDIVISION
ORDINANCE, TITLE 21 TO CLARIFY EXISTING CODE LANGUAGE.*

*WHEREAS, the Council has adopted the following Findings and Conclusion:
FINDINGS*

- 1....*
- 4. The text changes will not result in more restrictive regulation.*
- 5. There are no substantive policy issues involved in the proposed changes.*
- 6. The minor text changes will clarify meaning by adding or deleting certain words in the text.*
- 7. The text changes will make language consistent with most current state statutes.*
- 8. The text changes will make language consistent with subsequently adopted county statutes.*
- 9. The text changes will correct obvious flaws or errors in syntax that yield unreasonable conclusions or interpretations."*

WCC 20.36.156 was modified by this 1996 ordinance to read as follows:

"20.36.156 Rural District - Conditional Uses. Change 20.20.36 to read as follows:

**.156 Private Commercial kennels and stables intended for boarding
propagation or training of domestic animals.**

Although the findings clearly state that "The text changes will not result in more restrictive regulation" the removal of the word "propagate" clearly eliminates breeding as an allowed use and therefore is more restrictive. The word Domestic is not defined and a little trip through the internet shows inconsistency in how it is used. The internet trip also shows that the word domestic and domesticated are not completely synonymous.

Whatcom County first defined "kennel" in the zoning ordinance with the adoption of

Ordinance 099-086 on December 7, 1999. This was also a “code scrub” and the Findings of the Council again stated

1.
4. *The text changes will not result in more restrictive regulation.*
5. *There are no substantive policy issues involved in the proposed changes.*
6. *The minor text changes will clarify meaning by adding or deleting certain words in the text.*
7. *The text changes will make language consistent with most current state statutes.*
8. *The text changes will make language consistent with subsequently adopted county statutes.*
9. *The text changes will correct obvious flaws or errors in syntax that yield unreasonable conclusions or interpretations.”*

The adopted ordinance re-defined kennel as follows:

20.97.191 Kennel. “Kennel” means a commercial establishment in which 5 or more dogs or domesticated animals are housed, groomed, bred, boarded, trained, or sold for a fee or compensation.

The words “dogs or domesticated animals” was used to describe what kind of animals were allowed in a “kennel”. However, the conditional use allowed in 20.36.156 was not modified and remained.... “Commercial kennels and stables intended for boarding or training of domestic animals.” The “propagation” in the language describing the kennel/stable conditional use in the Rural zone had been removed in 1996, eliminating breeding as an allowed conditional use. Breeding was allowed in kennels as defined in WCC 20.97.191 adopted in 1999, creating an obvious ambiguity.

Under the Director’s Code Interpretation the definition of kennel adopted in 1999 did not apply to any of the then existing sections of the Zoning Ordinance allowing kennels at the time it was adopted, which would make its adoption superfluous or with no meaning or effect.

In fact, under the Code Interpretation of the Director challenged here, the adopted (in 1999) and twice modified statutory definition of kennel never applied to kennels in any zone until kennel was added as a conditional use allowed in the Agriculture Zone in 2017.

This definition kennel adopted in 1999 was modified by Ordinance 2005-079 to read as follows:

20.97.191 Kennel

"Kennel" means a commercial establishment in which five or more dogs, cats, or other household pets are housed, groomed, bred, boarded, trained or sold for a fee or compensation.

This change, which replaced "...dogs or other domesticated animals" with "...dogs, cats, or other household pets..." was described by staff to the Planning Commission in the RECORD OF PROCEEDINGS OF THE WHATCOM COUNTY PLANNING COMMISSION April 14, 2005 as follows:

"20.97.191 Kennel

Olsen: We are adding some wording to read: "Kennel" means a commercial establishment in which five or dogs, cats, or other household pets are housed, groomed, bred, boarded, trained or sold for a fee or compensation." We are doing this to distinguish between cows, sheep, etc."

In other words, the change was intended to remove domesticated farm animals from the type of animal allowed in kennels. Instead, the type of animal to be allowed in a kennel was "...dogs, cats, or other household pets...". They could be "*housed, groomed, bred, boarded, trained or sold for a fee or compensation.*" There is no indication the change was meant to require the individual dogs, cats, or other animals allowed to be kept in a kennel to actually be household pets at the time kenneled. In fact, by allowing breeding and training in kennels implies the keeping of animals that are not currently household pets and may not end up as household pets. Again, under the Director's current code interpretation, this change in the definition of kennel would not have applied to any place in the code where the defined word kennel was then being used, which would again the change meaningless.

IN 2011 "Animal kennels" was added as a conditional use in the Rural General Commercial Zone, on the adoption of WCC 20.59. Under the Director's Code Interpretation, the definition of kennels in the Zoning Ordinance does not apply even though kennel was a defined word In Title 20 at the time WCC 20.59 was adopted.

Our legislative history journey takes us to the final change in the definition of “kennel”, which occurred in 2017 with the adoption of Ordinance 2017-030. This Ordinance amended definition of kennel found in WCC20.97.191 to read as follows:

20.97.191 Kennel.

“Kennel” means a commercial establishment in which five or more dogs, cats, or other household pets are housed, bred, or boarded for a fee or compensation. A kennel may include grooming and/or training as accessory uses. (Ord. 2017-030 § 1(Exh. I), 2017; Ord. 2005-079 § 1, 2005; Ord. 99-086, 1999).

This change was described in the legislative history by staff as follows:

“The definition of Kennel in WCC 20.97.191 includes housing, grooming, breeding, boarding, training, or sale of five or more household pets. Because these activities are listed with an “or”, a facility with any one of those activities could be considered a kennel under the current definition. The Merriam-Webster Dictionary defines a kennel as “an establishment for the breeding or boarding of dogs or cats.” The proposed amendment would clarify the code’s definition, limiting the activities to housing, breeding, or boarding, which is more consistent with the traditional function of kennels.” EXHIBIT I, ATTACHMENT TO ORDINANCE 2017-030.

This change in definition of kennel was to clarify that grooming and training were not stand alone uses under kennel but were instead to be accessory uses allowed in a kennel. This change did not involve the types of animals that could be kept in a kennel but instead was designed to make it clear that a grooming or training facility could not be approved as a kennel but could be provided as an accessory use in a kennel approved for housing, breeding, or boarding. (The staff explanation above does indicate staff’s belief that only household pets could be kept in kennels, an interpretation that makes the inclusion of the words “...dogs, cats, or...” in the actual definition superfluous.) Breeding was retained as an allowed stand alone use.

CONCLUSIONS OF LAW

I.

Kennels can be approved under the Zoning Ordinance, Title 20 of the Whatcom County Code only for those animals allowed under the current definition of kennel found in WCC 20.97.191.

The word kennel is a defined term in the Whatcom County Zoning Ordinance. WCC 20.97.191. Anyplace the word is used in Chapter 20 of the Zoning Ordinance the definition must be used. If this creates a conflict or ambiguity because of the context where the word “kennel” was used, the conflict or ambiguity must be resolved using the general rules of statutory construction and a determination of “legislative intent. As shown by the legislative history set out above, under the Director’s code interpretation, the adoption of the definition of kennel did not have any effect any place in the word is used until it is referred to in the Ordinance allowing kennels as a code use in the Agriculture zone in 2017. This interpretation strips the adoption of the statutory definition of kennel, and each of its modifications of any meaning. Interpretations that make statutory language superfluous are not consistent with the rules of statutory construction. It was the clear intention in adopting a statutory definition for kennel, that it be used at the time adopted.

The Hearing Examiner concludes that anytime a use allowed under the Zoning Ordinance as a kennel is reviewed the use must be consistent with the definition in place at the time.

In the case of conditional uses, allowed in certain zones as “animal kennels” the animals that may be kenneled are limited to those described in the definition of kennel, (with the probable exception of kennels directly associated with a veterinary clinic where presumably any animals treated could be kept for treatment purposes).

In the Rural zone the adopted current definition modifies the allowed use of kennels for domesticated animals to kennels for animals allowed under the definition.

At one point the word kennel was defined using the term “dogs or other domesticated

animals.” In 2005, the definition was amended to remove “other domesticated animals,” and added “...cats, and other household pets...” indicating a legislative intent to change the types of animals that could be kept in a kennel. That change required that kennels approved include only the animals allowed under the adopted definition and must be read to modify the more general language allowing kennels for all domesticated animals in the Rural zone.

II.

The individual animals kenneled in a kennel, as defined in WCC 20.97.191 do not have to be actual household pets. They have to be a dog, cat, or an animal type that is kept commonly kept as a “household pet”.

The current definition of kennel in WCC 20.97.191 reads as follows:

20.97.191 Kennel.

“Kennel” means a commercial establishment in which five or more dogs, cats, or other household pets are housed, bred, or boarded for a fee or compensation. A kennel may include grooming and/or training as accessory uses. (Ord. 2017-030 § 1 (Exh. I), 2017; Ord. 2005-079 § 1, 2005; Ord. 99-086, 1999).

All of the parties appear to agree that this definition limits the animals that can be kept in a kennel to those individual animals who are actually household pets at the time kenneled. This interpretation makes the phrase “dogs, cats, and other household pets...” to mean “actual household pets”. The Hearing Examiner disagrees. There is nothing in the legislative history that suggests that this was the intent at the time that definition was added to the code or when later modified. This interpretation reduces the words “...dogs, cats or other household pets...” to “household pets”, making the words “... dogs, cats, or...” superfluous, which, as noted before is contrary to a basic rule of statutory construction. All words used must be given some meaning. This interpretation is not consistent with the fact that kennels

are allowed for breeding purposes. For example, a structure used for breeding turtles, goldfish or hamsters would appear to be appropriate conditional uses for a kennel (the breeding of animals that are kept as household pets) but the actual animals kept and produced this way are unlikely to be considered actual household pets. They become household pets when they are actually being kept as a pet.

The fact that the language "... or other..." is being read as not allowing animals, who are not actual household pets at the time of kenneling' to be kenneled; or read as the breeding of animals in a kennel is limited to breeding of animals only when the individual animals kenneled for breeding were actual "household pets" at the time they came to the kennel results from the inappropriate use of or other in this context causing ambiguity in the definition and making it subject to subject to interpretation.

The Hearing Examiner concludes the definition of kennel allows all dogs to be kenneled. It allows all cats (the common domesticated house cat) to be kenneled, and it also allows species kept household pets to be kenneled. The "or" is additive, giving us dogs, cats plus household pets as animals that can be kenneled.

The term "or other" is generally not used in the manner used in the WCC 20.97.191 definition of "kennel ". The following are representative of the Google search findings for "or other ":

"One besides the one mentioned. This phrase is used to emphasize indefinite words beginning with some, such as someone, somehow, sometime, somewhere." (Dictionary.com).

Some.....or other

used to refer to one of several possibilities when the exact one is not known-or not stated: (dictionary.cambridge.com)

or other ***“Or another possible alternative. Used after words or phrases beginning with some.”*** (Farlex dictionary of idioms).

Or other somehow or other definition and meaning | Collins ...

www.collinsdictionary.com > dictionary > English > or-...

or somehow **or other**. phrase. You use **or other** in expressions like somehow **or other** and someone **or other** to indicate that you cannot or do not want to be more precise about the information that you are giving. [vagueness] I was going to have him called away from the house on some pretext **or other**.

Use of “...or other...” in the definition of kennel following the definite nouns “...dogs, cats...” is not the normal or accepted use of the phrase.

It is the use of the phrase “...or other household pets...” that allows one to reach the conclusion dogs and cats are not allowed in a kennel unless they are actual household pets. Reading the ordinance this way would require a determination by a kennel owner that each individual animal brought to the kennel was actually being treated and kept as a household pet. It would limit the breeding use allowed to: breeding of animals that are household pets at the time they are kenneled; a somewhat absurd result. The Hearing Examiner concludes that a better reading of the definition of kennel is that dogs, cats, and household pets are the species or sub-species of animals that can be kenneled— “... housed, bred or boarded...” in a kennel.

III.

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

This matter is remanded to the Director of Planning and Development Services for modification of the Code Interpretation issued consistent with this Decision.

Kennels can be approved under the Zoning Ordinance, Title 20 of the Whatcom County Code, in all zones, only for those animals allowed under the current definition of kennel found in WCC 20.97.191.

The individual animals allowed to be kenneled in a “kennel”, as defined in WCC 20.97.19, do not have to be actual household pets. They have to be a dog, cat, or an animal type that is kept commonly kept as a “household pet”.

CBP dogs can be kept in approved kennels in all zones allowing kennels including the Rural zone. CBP dogs can also be approved as a “public/community facility” in the districts that allow them.

(As stated by the Director in the code interpretation, it should be noted that, if care of CBP dogs does not fit within the conditions of an existing CUP, a revision to the existing CUP or additional permitting might be necessary.)

**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.

DATED this 18TH day of February 2021.



Michael Bobbink, Hearing Examiner