ISLAND COUNTY HEARING EXAMINER

RE: SITE PLAN REVIEW ) File No. SPR 469/07
Applicant: John Cline ) FINDINGS OF FACT
) CONCLUSIONS OF LAW
) AND DECISION

SUMMARY OF APPLICATION AND DECISION

APPLICATION: Proposal is for a Site Plan Approval for a Home Industry on a 43.2 acre site. The Home Industry is a kennel, where the applicants will board and groom dogs and cats. The Home Industry will take place in a 6,720 square foot building, with a footprint of 4,032 square feet. There will also be a 60 foot long graveled access drive leading to a 120 foot long parking and turn-around area that will serve only the kennel. The parking area is proposed to be approximately 6,000 square feet.

DECISION: Site plan approval is granted subject to conditions.

FINDINGS OF FACT

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted herein and evidence presented at the public hearing on June 7, 2007.

I.

PRELIMINARY INFORMATION

Applicant: John Cline

Property Location: 2859 Taylor Road, Oak Harbor, Washington
Applicable Ordinances, Statutes and Regulations: Chapter 17.03, Zoning Ordinance; Chapter 17.02, Critical Areas, Chapter 16.15, Site Plan Review Ordinance; Chapter 16.19, Land Use Review Process, and Chapter 16.14C, County Environmental Policy.

SEPA: A DNS was issued by Island County on April 19, 2007.

Publication: South Whidbey Record – May 23, 2007

Mailing of Notice to Applicant: May 10, 2007

Sign Posted: January 17, 2007

Mailing of Staff Report: May 29, 2007

Date of Application: January 12, 2007

Hearing Date: June 7, 2007

Exhibit Log:

1. Staff Report
2. Three maps of subject parcel dated 3/28/07
3. Real Estate Excise Tax Affidavit dated 5/26/06
4. Section 1 – Proposal for kennel
   Section 2 – SPR Application dated 11/6/06
   Section 3 – Kennel Building Design Parameters
   Section 4 – Parcel Summary Report and Quarter Section Map
   Section 5 – Vicinity Map and Instructions
   Section 6 – Water Well Report
   Section 7 – Septic Site Registration and spoils report
   Section 8 – Certificate of Traffic Concurrency and Access Permit and Traffic Report, Recorded Roadside Utility Easements
   Section 9 – Public meeting materials
   Section 10 – Copy of site plan and map of contiguous property
   Section 11 – Visual Impact
   Section 12 – Architecture Plan
   Section 13 – Sign Plan
   Section 14 – Lighting Plan
   Section 15 – Landscape Plan
   Section 16 – Drainage Plan
   Section 17 – Hazardous Chemical Inventory
   Section 18 – Environmental Checklist
5. Notice of incomplete application dated 11/9/06
6. Ltr dated 11/16/06 from John Cline to Monica Felici, Island County Planning & Community Development
7. Pre-Application Conference Application dated 12/14/06
8. Request for Comment dated 12/15/06
9. Ltr dated 12/28/06 from Ginger Burgess to John Cline
10. Email dated 1/1/07 from John Cline to Ginger Burgess
11. Email dated 1/8/07 from Ginger Burgess to John Cline
12. Memo dated 1/8/07 from Tamra Patterson, Plans Examiner, to Ginger Burgess
13. Pre-Application Meeting Sign in Sheet dated 1/11/07
14. Pre-Application 947/06 Planning Department Comments dated 1/11/07
15. Memo dated 1/11/07 from John Bertrand, Development Coordinator, to Ginger Burgess
16. Memo dated 1/11/07 from Aneta Hupfauer, Island County Health Department, to John Cline
17. Request for Comment dated 1/12/07
18. Account Summary Snapshot
19. Account Structure Shapshot
20. Parcel Summary info
21. Quarter Section Map
22. Notice of complete application dated 1/12/07
23. Affidavit of Posting the Public Notice Sign dated 1/17/07
24. Ltr dated 1/18/07 from Aneta Hupfauer, Island County Health Department, to Ginger Burgess
25. Affidavit of mailing public notice to the contact person dated 1/19/07
26. Affidavit of mailing public notice to parties of record dated 1/19/07
27. Memo dated 1/22/07 from Tamra Patterson, to Ginger Burgess
28. Ltr dated 1/23/07 from Bill Massey to Ginger Burgess
29. Island County Notice of Application with SEPA dated 1/24/07
30. Affidavit of Publication dated 1/24/07
31. Ltr dated 2/2/07 from Christine Goodwin, to Ginger Burgess
32. Ltr dated 2/6/07 from John Dinger, to Ginger Burgess
33. Ltr dated 2/6/07 from Rudolph Knaack to Ginger Burgess
34. Ltr dated 2/7/07 from John Dinger, to Ginger Burgess
35. Memo dated 2/8/07 from Ginger Burgess to John Bertrand
36. Ltr dated 2/14/07 from Ginger Burgess, to John Cline
37. Memorandum from Ginger Burgess, to John Bertrand, Aneta Huypfauer
38. Site plan dated 3/28/07
40. Lighting drawing dated 3/28/07
41. Grading calculations for proposed Boarding Kennel dated as received 3/28/07
42. Drainage calculations for proposed Boarding Kennel dated as received 3/28/07
43. Memo dated 4/9/07 from Aneta Hupfauer, to Ginger Burgess
44. Memo dated 4/13/07 form John Bertrand to Ginger Burgess
45. Final SEPA Threshold Determination dated 4/19/07
II.

The applicant is seeking site plan approval for the operation of an animal kennel for the boarding and grooming of dogs and cats. The site is a 43.2 acre site located in the Commercial Agriculture (CA) zone. Home Industries are allowed in
this zone as Conditional Uses. A kennel is specifically listed in the code as a Home Industry.

The proposed kennel will be located in the northeast portion of the parcel on soils which are not prime agricultural soils. The smallest setback for the proposed kennel development will be 110 feet from Taylor Road. The kennel location is approximately 200 feet from the north property line and over 1,000 feet from the south and west property lines. The nearest residence appears to be approximately 600 feet from the kennel site. The residences of those who testified at the public hearing in opposition to the proposal appear to be more than 1000 feet from the kennel site. The kennel is required to meet the noise standards at the boundary of the property, the closest of which is 110 feet from the kennel.

III.

Island County Planning & Community Development has reviewed the proposal and has recommended approval subject to conditions. The Findings of Fact of Island County Planning & Community Development are laid out in the staff report, Exhibit #49 in the Hearing Examiner file. The applicant indicated that the factual findings set forth in the staff report were accurate to the best of the applicants’ knowledge. There was no testimony at the hearing which would contradict the facts laid out by staff in the staff report. For this reason the Hearing Examiner hereby adopts the factual findings set forth in the staff report.
as Findings of Fact herein. The factual findings of the staff report are incorporated by this reference. A copy of the staff report is attached hereto.

IV.

The Island County Health Department and the Island County Engineering Division have recommended approval of the proposal subject to recommended conditions. The applicant has indicated no objection to any of the conditions recommended by Island County agencies.

V.

A SEPA Determination of Non-Significance was issued on April 19, 2007. This determination of environmental non-significance was not appealed.

VI.

The proposed two story building will meet the height requirements for the zoning district. The proposed building will have a footprint of 4,032 square feet. A barn located on this agricultural parcel contains 4,508 square feet. The proposed building has been designed to fit in with the agricultural and rural nature of the area and will not be out of character with surrounding uses. Aesthetically the proposed building will not be detrimental to this rural neighborhood.

In order to maximize aesthetic compatibility with the area the applicant has proposed creation of an orchard between the kennel building and Taylor Road and other plantings of poplars along property lines. The fenced outdoor area adjacent to the kennel will consist of chain link fencing and a vegetation hedge.

VII.
There was significant community concern and opposition to this proposal. Five comment letters were received prior to the public hearing. There was public testimony at the hearing in opposition to the proposal and petitions opposing the kennel project containing signatures of more than 30 citizens. Most of the concern and opposition came from people living at least 1/3 of a mile from the proposed kennel operation. Concerns were raised regarding numerous issues. These included noise concerns, environmental impacts resulting from animal waste, odors, impacts on the aquifer providing water in the neighborhood, potential property value reduction, and concerns about loose or stray dogs.

VIII.

The Hearing Examiner has concluded that all of these concerns have been adequately addressed by the Island County agencies with jurisdiction. The applicant is required to meet the noise standards set forth in the Washington Administrative Code (WAC) and in the Island County Code (ICC). The applicant will be required to meet these standards at the nearest property boundary, which is 110 feet from the kennel building. Since there are no neighboring property owners living anywhere near that close to the kennel the Hearing Examiner concludes that noise impacts on surrounding residences will should be less than the legal limits established by both the State and Island County.

The Island County Health Department has approved a Waste Management Plan. There is no evidence in the file which would indicate that this plan is inadequate. There is no evidence that the proposed kennel operation will lead to significant
environmental impacts even though neighboring residents express concern about negative impacts on water quality and the animal waste.

There is also no evidence that nuisance odors will affect surrounding residences. If the kennel is operated consistent with applicable ordinances and the conditions of approval the Hearing Examiner concludes that there will be no significant detrimental affect on neighboring property owners.

In regards to noise it should specifically be noted that the kennel is within the AICUZ Noise Zone 3. Regulations for development within this zone require significant additional noise abatement to be built into newly constructed structures in order to protect persons living or working within these structures from the negative impacts of noise. The applicant will be required to construct a building with significant sound abatement which should further reduce the potential for adverse noise impacts offsite.

IX.

While the record indicates a significant number of concerns about potential negative impacts there is no evidence in the record which would actually support a finding that these potential impacts have not been sufficiently mitigated.

X.

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 project area is zoned Commercial Agriculture (CA). Home Industries are conditionally allowed in the CA zone pursuant to ICC 17.03.100(B).

Animal kennels are specially listed as a Home Industry in ICC 17.03.180.J(1).

As a Conditional Use the proposed kennel must meet the requirements for site plan approval of ICC 16.15.060 pursuant to ICC 17.03.180.J(2)(c).

II.

In order to approve the kennel the project must be consistent with the site plan review criteria of ICC 16.15.060 and with the applicable development standards of ICC 17.03.180.J. Island County Planning & Community Development has concluded that, subject to compliance with 21 conditions of approval, including compliance with the requirements of the Island County Health Department and the Island County Public Works Department that the proposal will meet all of the applicable requirements and has recommended the Hearing Examiner approve the proposed kennel subject to these conditions.

III.

The conditions of approval recommended by staff should be modified to include no composting of animal waste without approval from the Island County Health Department and a requirement that no nuisance odors be allowed to escape the boundaries of the subject property. These amendments should be added to condition #4, as proposed by staff.
IV.

Proposed condition #16 requires that the applicant ensure that the structure is insulated such that noise generated by the kennel cannot be heard beyond the property boundaries. This exceeds statutory authority and the condition should be amended to require that the applicant insulate the structure with noise abatement insulation to ensure that the applicable noise standards are complied with and to further reduce noise generated by the kennel to the degree reasonable feasible.

V.

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

The Island County Hearing Examiner hereby grants approval to SPR 469/06, approving a proposal for a Home Industry on Assessor’s Parcel #R23330-143-4350, at 2859 Taylor Road, Oak Harbor Washington, subject to the following conditions:

1. The uses on the site shall be limited to the existing single-family residence with accessory buildings, and a Kennel Home Industry to be housed in a 6,720 square foot building, as shown on the site plan.

2. All development shall be in conformance with the approved Site Plan Review and conditions of approval unless they are amended in conformance with Section 16.15.130 ICC. Any changes or expansions to the use of the building or site shall require the review of a site plan amendment that will include but not be limited to a new traffic analysis and parking plan.
3. Compliance with all conditions of the Island County Engineering Division as specified in the memorandum dated April 9, 2007 from John Bertrand.

4. Compliance with all conditions of the Island County Health Department as specified in the memorandums dated January 18, 2007, and April 9, 2007 from Aneta Hupfauer. No composting of animal waste onsite shall be allowed unless approved by the Island County Health Department. The handling of all waste shall be in a manner consistent with the approved Waste Management Plan. No nuisance odors shall be allowed to escape the boundaries of the parcel.

5. A Building Permit is required prior to construction of any structure, including fences over six feet in height and signs.

6. The Home Industry shall meet all applicable requirements of ICC 17.03.180.J **Home Industry** and the following standards:
   a. In order to establish a new Home Industry the property owner shall sign an agreement that:
      i) Acknowledges the requirements of ICC 17.03.180.J; and
      ii) Agrees that the Home Industry will be discontinued or brought into strict conformance with the requirements of this Section upon notification from the Director of any violation of this Section.
      iii) The owner(s) of a Home Industry shall certify compliance with conditions of approval.
      iv) When the business no longer complies with the criteria established above and the conditions included in any approval, the business shall relocate to a zoning classification which would permit the activity. Such conditions shall be recorded by the owner against the title of the property with the Island County Auditor.

7. Hours of operation for the Kennel will be 9:00 am to 5:00 pm, as proposed by the applicant.

8. Animals being kept on the premises shall be allowed outside only between the hours of 11:00 a.m. and 4:00 p.m., as proposed by the applicant.

9. Animals shall be sheltered in a suitable, noise attenuating, clean structure.

10. If animals are kept or let outside unleashed, they shall be kept in a fenced and screened enclosure.

11. All waste shall be disposed of in a sanitary manner approved by the Island County Health Department.
12. Total number of animals housed in each kennel shall not exceed humane standards as established by Animal Control and other appropriate authorities/agencies.

13. The Owner(s) of the business shall be a full-time resident of the Lot, Tract or Parcel proposed for the Home Industry.

14. All activity related to the conduct of the business or industry shall be conducted within an enclosed structure unless totally screened from view.

15. The Home Industry will not employ more than a total of five (5) full-time employees who reside off the subject property and either work on-site or report to work on-site.

16. In accordance with WAC 173-60-040, the Home Industry shall not cause or permit noise to intrude into the property of another person in which noise exceeds the maximum permissible environmental noise level of 55 dBA. The applicant shall work with the building department to ensure that the structure is insulated such that the noise generated by the kennel cannot be heard beyond the property boundaries. The applicant shall work with the Building Department to ensure that the structure is insulated such that the noise generated meets the noise requirements of WAC 173.60.040 at the property boundaries and further that the noise generated is abated to the greatest degree reasonably feasible. If the Island County Planning & Community Development department determines that there is a reasonable possibility noise standards are not being met the applicant will comply with a written request from Island County Planning & Community Development that a professional noise study be done in order to determine compliance.

17. Prior to any clearing, filling, excavating, or grading in any quantities on steep slopes, and any accumulative filling and/or excavation exceeding five hundred (500) cubic yards, the applicant shall obtain a Clearing and Grading Permit from Island County. Prior to any timber harvest or removal, the applicant shall obtain any required Forest Practices permit from Washington Department of Natural Resources.

18. Future installation and extension of power to the site shall be underground.

19. Prior to installation of any signs, a detailed Sign Plan and building permit application for the sign shall be submitted for review.

20. Prior to occupancy of the building and Final Inspection, all site and off-site improvements required as a condition of SPR approval shall be completed, OR, at the discretion of the Board of County Commissioners by recommendation of the Planning Director and County Engineer shall be bonded.
21. The above requirements are subject to change if any other information provided by the applicant or their authorized representative proves inaccurate.

Entered this 20th day of June, 2007, pursuant to authority granted under the laws of the State of Washington and Island County.

________________________________
MICHAEL BOBBINK
Island County Hearing Examiner

APPEAL PROCESS:

SPR

This decision of the Hearing Examiner shall be a final and conclusive decision unless within fourteen (14) days following the mailing of such decision a written statement of appeal is filed with the Island County Board of Commissioners by the applicant, a Department of the County, or Party of Record, who is also an Aggrieved Person. Said statement shall set forth any alleged errors and/or the basis for appeal and shall be accompanied by a fee pursuant to the fee schedule adopted by the Board; provided that such appeal fee shall not be charged to a department of the County or to other than the first appellant ICC 16.13.100.b; ICC 16.19.190.