

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of the Application of Todd and Liana)
Viken for a Conditional Use Permit for a Type II)
Home Occupation to Operate a Dog Boarding) FINAL ORDER NO. 66-2010
Kennel in a Rural Residential (RR-5) Zone)

WHEREAS, on May 3, 2010, Todd and Liana Viken applied for a Conditional Use Permit for a Type II Home Occupation to operate a dog boarding kennel for up to twelve (12) dogs on an approximately 5.34-acre parcel in the Rural Residential-5 (RR-5) zone (Application No. CU 10-45). The parcel is located at 55501 Columbia River Highway, Scappoose, Oregon 97056 (Tax Account Number 4130-030-00100); and

WHEREAS, the application was deemed complete on May 18, 2010; and

WHEREAS, after proper notice the Columbia County Planning Commission held a public hearing on the application at its regularly scheduled meeting on June 21, 2010, heard testimony and received evidence into the record; and

WHEREAS, at the June 21, 2010 meeting, after hearing testimony and receiving evidence, the Planning Commission closed the hearing to further testimony and evidence, deliberated on the matter and voted 4-2 to deny the application; and

WHEREAS, on June 28, 2010, the applicants filed an appeal of the Planning Commission's decision to the Columbia County Board of Commissioners ("Board"); and

WHEREAS, a hearing was then scheduled before the Board for August 25, 2010, and notice of the hearing was sent on July 26, 2010 to the applicants, nearby property owners, and those who participated in the proceeding; and

WHEREAS, at the applicants' request, the hearing was rescheduled to September 15, 2010; and

WHEREAS, on September 15, 2010, the Board held a public hearing on the appeal at its regularly scheduled meeting, heard testimony, and received evidence into the record; and

WHEREAS, the Board then closed the public hearing and continued the matter to its regularly scheduled meeting on October 6, 2010 for deliberation; and

WHEREAS, on October 6, 2010, the Board deliberated on the matter and voted unanimously to tentatively approve the application as recommended by staff, with two additional conditions of approval to mitigate the impacts of the kennel on the neighboring property to the north and to ensure that the kennel is operating in compliance with the approval criteria and conditions.

NOW, THEREFORE, in addition to the findings and conclusions in the Staff Report, attached hereto as Attachment 1 and incorporated herein by this reference, the Board of County Commissioners makes the following additional findings based on the evidence submitted and received into the record on this matter:

1. The Board received testimony from property owners adjacent to and in the vicinity of the proposed kennel objecting to the potential noise impacts that would be generated by the 12-dog boarding kennel. Columbia County Zoning Ordinance (CCZO) 1503.5(E) applicable to conditional uses provides: "The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying district." In addition, CCZO 1507.3(B) applicable to home occupations provides: "A home occupation shall not unreasonably interfere with other uses permitted in the zone in which the property is located." For the reasons described in the Staff Report and for the following additional reasons, the Board finds that the application meet these criteria:
 - a. Although the addition of 12 dogs to the applicants' RR-5 zoned property will likely create some noise impact, the Board finds that when kept in the basement of the home as proposed, the dogs will not create a noise impact that will substantially limit, impair, preclude, or unreasonably interfere with the allowed uses on the surrounding properties. This is in part because the area where the dogs will be kenneled is noisy. Highway 30 is a heavily traveled state highway. At 30 feet from the property line, the applicants' house sits very close to the highway, where road noise is most pronounced. In addition, the dogs will be kenneled in an underground basement, which will further mitigate any barking.
 - b. The potential for greater noise impacts will occur when the dogs are exercised outdoors. However, the Board finds that with the applicants' proposed restrictions and additional requirements by the County, such impacts will not substantially limit, impair, preclude, or unreasonably interfere with the allowed uses on the surrounding properties. First, like the applicants' house, the exercise area is on the eastern portion of the property, along Highway 30, where the road noise is most pronounced. Second, the applicants will only exercise the commercially boarded dogs outside in groups of four, for 45 minutes, twice per day. The boarded dogs, therefore, will be outside no more than a total of 4.5 hours per day. Third, the applicants will restrict the boarded dogs to the existing fenced area at the east end of the property. Fourth, as a condition of approval, the

dogs must be kept indoors between the hours of 9 p.m. and 6 a.m. Fifth, because the property to the north will be most impacted when the dogs are exercised outside, the County is requiring, as a condition of approval, that the applicants plant landscaping in the form of a fairly mature dense hedge along the northern edge of the exercise area. In addition to the pronounced road noise from the highway, the landscaping will further mitigate noise impacts from the outdoor dog activity for the abutting property to the north.

2. The Board also heard testimony concerning enforcement should the kennel fail to operate in compliance with the approval criteria and conditions. To address this concern, the Board finds that it is appropriate to require that the use be reviewed in one year by the Department of Land Development Service for compliance with approval criteria and conditions.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. The Board of County Commissioners adopts the findings and conclusions in the Staff Report, attached hereto as Attachment 1 and incorporated herein by this reference; and
2. Based on the foregoing and the analysis provided in Attachment 1, the Planning Commission Denial of the Application of Todd and Liana Viken for a Conditional Use Permit for a Type II Home Occupation(CU 10-45) is REVERSED, and **CU 10-45 is hereby APPROVED, subject to the following conditions:**
 - a. This Conditional Use Permit shall become void unless the proposal has commenced in conformance with all conditions and restrictions established herein within the **2 year validity period**. Extensions of time may be granted by the Planning Director if requested in writing with the appropriate fee before the expiration date, given the applicants are not responsible for failure to commence with the proposal.
 - b. Kenneled dogs shall only be allowed outside if contained within the existing exercise yard or if on a leash or in a carrier. Kenneled dogs shall not be allowed on the property west of the existing dwelling and/or exercise yard.
 - c. Kenneled dogs shall only be allowed outside in groups of four, for 45 minute increments (each), two times per day. Total outside time for kenneled dogs shall not exceed 4 ½ hours.
 - d. The operator of the Home Occupation Business shall maintain proper dog kennel licensing from Columbia County Animal Control. Violation of the Columbia County Animal Control kennel licensing shall be considered inconsistent with this Conditional Use and will be subject to further review under conditions 11 and 12,

below.

- e. The Home Occupation Business shall comply with the Columbia County Noise Control Ordinance. In addition, all dogs shall be kept indoors between the hours of 9 PM and 6 AM.
- f. There shall be no more than 16 dogs on the subject property at any given time.
- g. The Home Occupation business shall be operated by a resident or employee of a resident of the property on which the business is located.
- h. The Home Occupation business shall employ no more than five (5) people, regardless of whether or not they are full-time or part-time positions.
- i. This Conditional Use Permit shall be applicable to this proposal only and shall not run with the land.
- j. Before any sign is established for this Home Occupation business, approval and all applicable permits shall be obtained from the County. All applicable sign standards in effect at the time of County review shall apply.
- k. The Department of Land Development Services reserves the right to review this application again in the future if it is determined that adjacent properties are being negatively impacted by the operation of this Home Occupation business.
- l. Any departure from the conditions of approval and restrictions established herein shall subject this Conditional Use Permit to suspension or revocation in accordance with the procedures of the Columbia County Zoning Ordinance.
- m. Sight-obscuring landscaping, such as a continuous arborvitae hedge of at least 6 feet in height, shall be planted along the northern boundary of the outdoor exercise area, inside the existing fence, prior to commencement of kennel operations.

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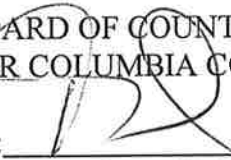
- n. The Department of Land Development Services shall review this application in one year to determine whether the approval criteria and conditions are being met.

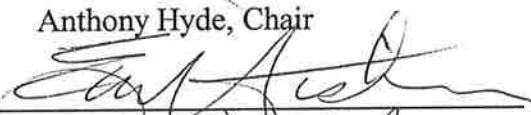
Dated this 13th day of October, 2010.


BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: 
Office of County Counsel

By: 
Anthony Hyde, Chair

By: 
Earl Fisher, Commissioner

By: 
Rita Bernhard, Commissioner

Attachment 1

COLUMBIA COUNTY BOARD OF COMMISSIONERS

STAFF REPORT

September 8, 2010

Conditional Use Permit - Type II Home Occupation

Appeal of Planning Commission Decision

HEARING DATE: September 15, 2010

FILE NUMBER: CU 10-45

**APPLICANTS/
OWNERS:** Liana and Todd Viken
55501 Columbia River Highway
Warren, OR 97053

SITE LOCATION: 55501 Columbia River Highway; Warren, OR 97053

TAX ACCOUNT NO: 4130-030-00100

ZONING: Rural Residential - 5 (RR-5)

SITE SIZE: Approximately 5.34 acres

REQUEST: Conditional Use Permit for a Type II Home Occupation for an overnight dog boarding facility.

APPLICABLE REVIEW CRITERIA:

<u>Columbia County Zoning Ordinance</u>		<u>Page</u>
Section 600	Rural Residential - 5 (RR-5)	8
Section 1300	Signs	9
Section 1400	Off-Street Parking and Loading	9
Section 1503	Conditional Uses	10
Section 1507	Home Occupations	15

APPLICATION COMPLETE: 5/18/10

150-DAY DEADLINE: 10/15/10

BACKGROUND:

On June 21, 2010, the Planning Commission opened a public hearing for the application of Todd and Liana Viken to operate an overnight dog boarding facility as a Type 2 Home Occupation from their residence located on Highway 30 between the cities of Scappoose and St. Helens. The Planning Commission listened to the Staff report and heard testimony from the applicants and interested parties. Planning Staff recommended approval of the Type 2 Home Occupation (CU 10-45) with 12 conditions, based on findings included in both this and the Planning Commission Staff Report. Testimony from the public included those in favor of the request and those opposed to the request. Details from said testimony are included in the Planning Commission's June 21, 2010 meeting minutes. The minutes are attached to this report for review.

After deliberation, a motion and second were made to deny CU 10-45. The motion was passed by the Planning Commission 4 - 2. On June 28, 2010, an appeal was filed by the applicants, alleging that the request is consistent with Sections 1503 (Conditional Uses) and 1507 (Home Occupations) of the Columbia County Zoning Ordinance as presented in Staff's findings in the Planning Commission Staff Report, dated June 11, 2010. The applicants, Todd and Liana Viken request approval of this Conditional Use Permit (CU 10-45) for a Type 2 Home Occupation. The Appeal Hearing was originally scheduled to be heard by the Board of County Commissioners on August 25, 2010, but was rescheduled on the request of the applicants to the September 15, 2010 Hearing. Notice of the appeal for CU 10-45 was published in the *Chronicle* on August 4, 2010.

The applicants applied for a Type 2 Home Occupation Permit approximately two years ago to operate a full service boarding, training and grooming facility from the same location. The proposal was approved by the Planning Commission, appealed by neighbors and subsequently denied by the Board of County Commissioners. The applicant has since modified the proposal to comply with the Home Occupation criteria of Section 1507 of the Columbia County Zoning Ordinance and to address concerns put forth by surrounding property owners and the Board of Commissioners during the previous application/hearing process.

The original proposal (CU 09-03) was to operate a full service pet camp and care facility (boarding, grooming and training) for up to 30 dogs. The request included new construction of a 4,600 square foot pole barn, built to commercial building standards, the addition of ten new parking spaces and two outside 3,000 square foot exercise yards. One employee was proposed per 10 dogs, for a total of 3 employees in addition to the applicants/property owners. The request also included the option for customers to visit the site during office hours between 8 AM and Noon and 4 PM and 6 PM, or by appointment 7 days a week. Finally, as originally proposed, dogs would be outside four at a time, two times a day for 45 minute increments. With 30 dogs, this accounts for a total of 12 hours of outside time.

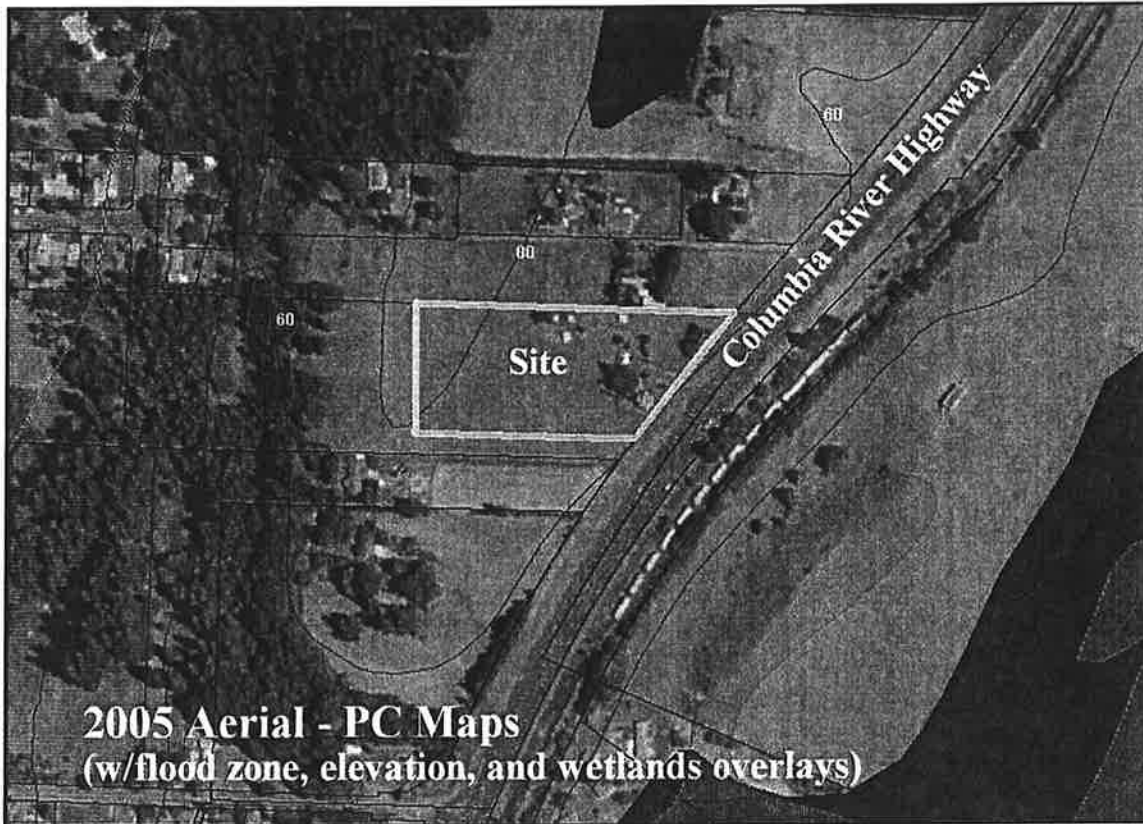
As mentioned previously, the Planning Commission's original approval of the project was appealed to the Board of County Commissioners in October of 2008 and heard by the Board at public hearings on January 14 and February 4, 2009. After hearing testimony and considering evidence and arguments in the record and the County's applicable approval standards, the Board voted unanimously to deny the application for the following reasons:

- Section 1507.3.B of the Columbia County Zoning Ordinance requires that a “home occupation shall not unreasonably interfere with other uses permitted in the zone in which the property is located.” *The Board found that the proposed use would unreasonably interfere with the residential use permitted in the RR-5 Zone due to the potential for noise (from barking dogs) to interfere with residential uses.*
- Section 1507.3.A of the County’s Zoning Ordinance requires a home occupation to be operated substantially in “the dwelling; or other buildings normally associated with uses permitted in the zone in which the property is located.” *The Board found that a disproportionately large pole barn, built to commercial standards in the RR-5 Zone did not constitute a building normally associated with uses permitted in the RR-5 Zone. Additionally, the Board found that the business was not going to utilize the dwelling itself and that the use contemplated regular and continuous use of an outdoor area as a key component of the service offered.*
- CCZO Section 1503.5.C requires that the “characteristics of the site are suitable for the proposed use considering size, shape, location, topography and natural features.” *The Board found that the proposal did not satisfy this criterion based on evidence submitted that the site is located on high ground and would maximize noise impacts interfering with the residential uses permitted in the zone. They also found that buffering from outdoor noise was provided for the applicant’s dwelling, but not for neighboring properties.*
- Section 1503.5.E requires that the “proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying district.” *The Board found that the noise impacts of the proposed use would alter the peace and quiet of the residential uses permitted in the RR-5 Zone.*

The applicants have revised the proposal to address the issues raised by the Board above. A detailed discussion of how the revised proposal complies with the Board’s concerns and specific Conditional Use Home Occupation criteria is addressed in depth through findings in this report. In summary, however, the new proposal has reduced the number of dogs by more than half, from 30 to 12. The applicant owns four personal dogs, which would account for a total of no more than 16 dogs on the property at any given time. No new construction is proposed as part of this request. The applicant intends to house the dogs in the basement of the existing single-family dwelling (see photographs on Page 7). The basement is approximately 900 square feet in size. Dogs will still spend a limited time outside, but the total number of outside hours has been significantly reduced from the original proposal. The original proposal requested 12 hours of outside time, whereas the revised proposal requests a total of 4 ½ outside hours for visiting dogs. The application states that dogs will be allowed outside in groups of four for 45 minute increments, two times per day. There are still two outside exercise yards proposed as part of this application. One such yard already exists, just north of the dwelling at the east end of the property along Highway 30. This yard is surrounded by solid wood fencing. The second exercise yard is proposed to be 3,360 square feet in size and located approximately 65 feet west of the existing residence and approximately 365 feet from the west property line. As proposed, this yard will be surrounded by a 6’ tall chain link fence with sight-obscuring slats. Finally, the revised request eliminated training and grooming services and customers from visiting the site on a regular basis. Only boarding services will be provided by the proposed home occupation and customers will not visit the site, except by appointment only and in the case of an emergency. All dogs will be picked up by the applicants and brought to the subject property.

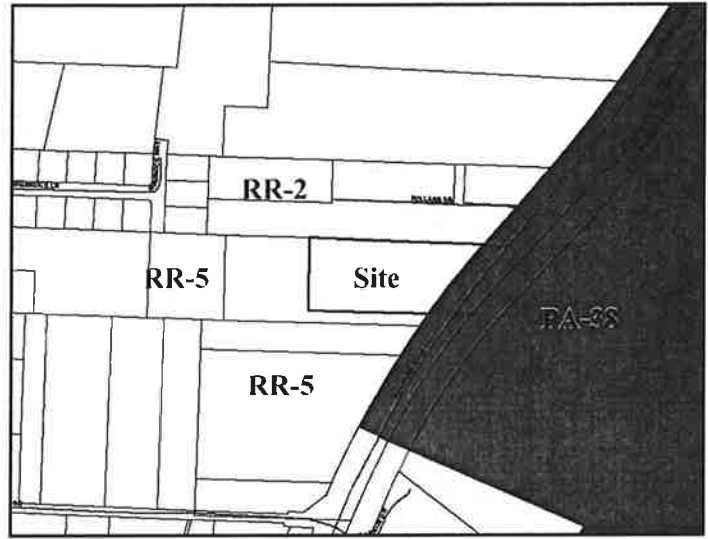
Differences in Type 2 Conditional Use Home Occupation Proposals	
<u>Original Proposal (2008)</u>	<u>Revised Proposal (2010)</u>
30 (customer) Dogs	12 (customer) Dogs
New construction of a 4,600 square foot commercially constructed pole barn, located behind (west of) the existing residence, proposed to house dogs	No new construction proposed; Dogs to be housed in the basement of the applicant's residence
2 outside fenced exercise yards, one located on the northeast portion of the property along Highway 30 and the other located behind the proposed pole barn (at least 100 feet from the west property line)	2 outside fenced exercise yards, one located on the northeast portion of the property along Highway 30 and the other located 65' west of the applicant's dwelling and 365' from the west property line. (However, see staff recommendation and Condition)
Office hours for customers between 8 AM and Noon and 4 PM and 6 PM, with flexible hours for appointments, 7 days a week	No office hours, customer visitation by appointment only, and not on a regular, daily basis
Dogs delivered to the property by dog owner and shuttled to the property by applicants	No dogs delivered to the property by dog owner; dogs only shuttled to the property by applicants
12 total hours of outside time for (customer) dogs	4 ½ total hours of outside time for (customer) dogs
10 new parking spaces proposed	No new parking spaces proposed
3 employees in addition to the applicants	No employees in addition to the applicants

The subject property is approximately 5.34 acres in size and roughly rectangular in shape. The site is developed with a single-family dwelling and several small accessory farm-type buildings. Columbia River Highway (Highway 30) forms the site's east property line and provides direct vehicular access to the subject property. A "Permit to Operate, Maintain and Use Approach" has been issued to the property from the Oregon Department of Transportation (ODOT) for ingress and egress to the site from the Highway. Said permit was submitted as part of this application. The site is almost completely flat with a slight slope towards Columbia River Highway. According to the National Wetlands Inventory Map for St. Helens, OR, FEMA FIRM Panel # 41009C0465 C, and Scappoose-Spitzenberg BEAK Maps, there are no wetlands, areas of flood hazard, hydric soils, and the property is not within any big game or other sensitive species overlay areas. Water is supplied to the site by the Warren Community Water Association and by a private well, and sewage disposal is handled by an existing onsite septic system. Emergency services are provided



to the site by the County Sheriff and the Scappoose Rural Fire Protection District. The site, zoned Rural Residential-5 (RR-5), is surrounded to the north by RR-2 zoned properties, to the south and west by RR-5 zoned properties and to the east (across Highway 30) by PA-38 (Primary Agriculture) zoned property. Properties adjacent to the site to the north and south are developed with single-family homes, and there is a small subdivision west of the site on Shamrock Lane located (at its nearest point) approximately 1,000 feet from the developed portion of the subject property. As stated previously, dogs will be housed in the basement of the applicant's home. The dwelling is located approximately 60 feet from the south property line, approximately 30 feet from Highway 30, approximately 200 feet from the north property line and approximately 500 feet from the west property line. The existing fenced exercise yard is located approximately 50 feet north of the dwelling and 500 feet from the west property line, encompassing the northeast corner of the property to the east (Highway 30) and north property lines. Additionally, as shown on the site plan, a new 48' x 70' play area is proposed to be located approximately 65 feet west of the house. Staff recommends that this play area be eliminated from the proposal to reduce the potential for noise to interfere with the residential subdivision west of the site. The applicant has no objection to removing the second exercise yard from the proposal. The exercise yard at the northeast end of the property is located as near Highway 30 as possible to alleviate the concern of noise impacts to surrounding residential properties. The applicant distributed a petition in support of this home occupation request (see attachments) of which both immediate neighbors to the north and south signed (34170 Pollard Drive and 55455 Columbia River Highway). *Note: The resident that signed the petition for 34170 Pollard Drive is a renter of the property and not the property owner. The property owner attended the public hearing on June 21, 2010 and spoke in opposition to the request.*

Zoning Map (PC Maps)



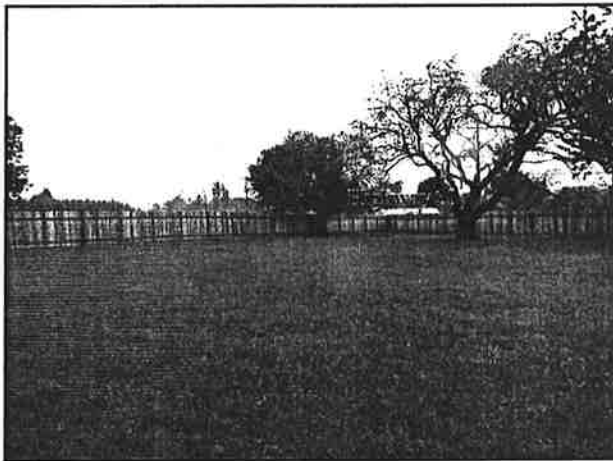
Surrounding Properties



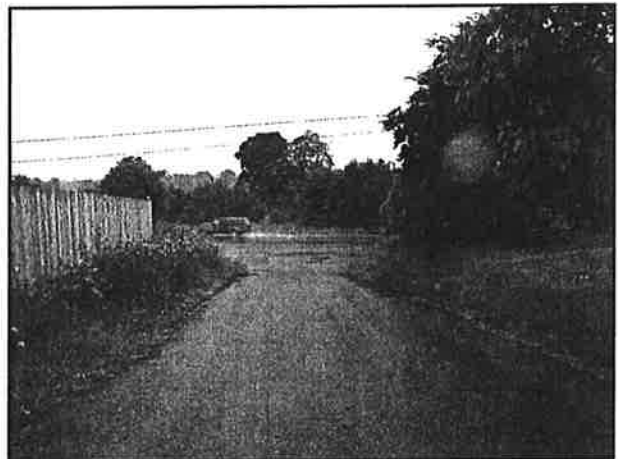
Surrounding Properties (Continued)



Existing Exercise Yard



Driveway/Highway 30



Basement of Existing Residence
Proposed Kennel Area



Outside Entrance/Exit of Basement



Single-Family Dwelling



REVIEW CRITERIA, FACTS, ANALYSIS & FINDINGS:

Beginning with the Columbia County Zoning Ordinance:

Section 600 Rural Residential (RR-5)

603 Conditional Uses:

- .3 Home occupations consistent with ORS 215.448, as provided in Section 1507.

Finding 1: Home occupations are conditionally permitted uses in the RR-5 zone. The proposed Type II Home Occupation may be permitted through approval of a Conditional Use Permit by the Planning Commission. Staff finds that the criterion is met subject to approval by the Planning Commission.

604 Standards:

- .1 The minimum lot or parcel size for uses permitted under Section 602 and 603.4 shall be 5 acres.
- .5 Lots or parcels shall conform to the following requirements before a building permit may be issued for construction on the property;
- B. All lots or parcels legally recorded before June 4, 1991 shall have a minimum of 50 feet of usable frontage on a public right-of-way or private non-exclusive easement. One-half of the public right-of-way or private non-exclusive easement adjacent to the lot or parcel shall be improved in accordance with the requirements of the Columbia County Road Standards. If the parcel to be developed abuts the end of a private non-exclusive access easement, one-half of the width of the easement shall be improved to current County Road Standards from the property line of the subject parcel to its connection to a public right-of-way. In lieu of such improvements, the owner or developer of the lot or parcel may secure a surety bond, or place cash in escrow or trust, to insure that the improvements will be completed according to the procedure outlined in Section 801 of the Columbia County Subdivision and Partitioning Ordinance. However, in the sole discretion of the Board, in lieu of the improvements or cash or surety bond to secure such improvements, the Board may require the owner or developer of the lot or parcel to put up cash in an amount equivalent to the cost of such improvements dedicated toward the improvement of the entire road rather than just the portion adjacent to the lot or parcel.
- .6 No residential structures shall be constructed closer than 30 feet to a property line. Where the property abuts resource zoning, the setback shall be increased to 50 feet.
- .7 Unless otherwise prohibited, the maximum building height for all non-farm, non-forest structures shall be 35 feet or 2-1/2 stories, whichever is less.

Finding 2: Section 604 of the Columbia County Zoning Ordinance typically pertains to new development

and land divisions in the RR-5 Zone. As no new development or division of land is proposed as part of this application, CCZO Section 604 is not applicable to this request. Never-the-less, the subject property is ± 5.34 acres in size and exceeds the minimum five acre lot size of the RR-5 Zone. The site has approximately 350 feet of frontage on Columbia River Highway (Highway 30). The existing single-family dwelling is located at least 30 feet from all property lines (approximately 30 feet from the east property line, 60 feet from the south, 200 feet from the north and 500 feet from the west). Finally, the existing dwelling is a single story and does not exceed 35 feet. Staff finds that the criterion is met.

Continuing with the Columbia County Zoning Ordinance:

Section 1300 Signs

1306 Signs pertaining to rural home occupations:

- .1 Shall not exceed 6 square feet.
- .2 Only one such sign shall be permitted upon the premises.
- .3 Shall not be artificially illuminated.
- .4 Shall be located at least 5-feet from the front property line.

Finding 3: The applicants have indicated that they are not applying for a sign at this time. A sign for rural home occupations, however, is permitted. At which time a sign is proposed, a sign permit shall be obtained from Land Development Services and all applicable criteria of Section 1306 of the Columbia County Zoning Ordinance satisfied. Staff finds that the criterion is met subject to conditions.

Continuing with the Columbia County Zoning Ordinance:

Section 1400 Off-Street Parking

1401 General Provisions: At the time of the erection of a new building, or an addition to an existing building, or any change in the use of an existing building, structure, or land which results in an intensified use by customers, occupants, employees, or other persons, off-street parking and loading shall be provided according to the requirements of this section.

1416 Minimum Required Off-Street Parking Spaces:

.1 Residential Uses:

Single-Family Dwelling: Two spaces for each dwelling unit.

Finding 4: CCZO Section 1401 requires that additional off-street parking and loading be provided for a change in use of an existing building when the change in use results in an intensified use by customers, occupants, employees or other persons. The applicants have indicated that no customers (except by appointment only and in the case of an emergency) will visit the site as a result of the proposed dog boarding home occupation. As described by the applicants, once a dog is accepted for care, “there will be a free pickup and delivery service within a 20 mile radius of the business’s location.” The applicant further

states:

“Hug-A-Bubba’s sleepover is a small private getaway for dogs. No customers will be allowed in or on the property. All business will be dealt with at the Portland branch. We will only be providing our address to customers in case of emergency. Otherwise, everything will be organized by phone or appointment.”

Additionally, there will be no employees, other than the homeowners, involved in the operation of the dog kennel. As such, additional parking spaces are not necessary or required for the proposed business. Section 1416 of the Columbia County Zoning Ordinance requires two parking spaces for each single-family dwelling. There are two existing parking spaces currently utilized by the applicants for residential purposes. In addition to these spaces, there is more than adequate space to accommodate an additional vehicle used to deliver and transport dogs to and from the property, or an occasional customer vehicle. The applicant has demonstrated a gravel parking and turnaround area directly northwest of the dwelling on the site plan. As no additional parking is required for the proposed use, the design and development standards for parking areas as outlined in Section 1400 of the County’s Zoning Ordinance are not applicable to this request. Based on the information provided, there is no evidence that this proposal will compromise on-site parking/loading or create parking/loading problems for neighboring properties. Staff finds that the criterion is met.

Continuing with County Zoning Ordinance:

Section 1503 Conditional Uses

- 1503 .4 Suspension or Revocation of a Permit: A Conditional Use Permit may be suspended or revoked by the Commission when any conditions or restrictions imposed are not satisfied.
- A. Conditional Use Permit shall be suspended only after a hearing before the Commission. Written notice of the hearing shall be given to the property owner at least 10 days prior to the hearing.
 - B. A suspended permit may be reinstated, if in the judgment of the Commission, the conditions or restrictions imposed in the approval have been satisfied.
 - C. A revoked permit may not be reinstated. A new application must be made to the Commission.

Finding 5: Though a Home Occupation may be found to not jeopardize public health, safety and welfare now, it could evolve to do so in the future. Thus, compliance with all conditions and applicable standards is necessary to ensure that the Home Occupation remains harmonious with surrounding properties. Compliance with conditions imposed in granting a Conditional Use Permit and adherence to any approved plan is required. Any departure from these conditions of approval and the approved plans constitutes a violation of this ordinance. In such circumstances this Conditional Use Permit will be subject to suspension or revocation by the Planning Commission.

- 1503 .5 Granting a Permit: The Commission may grant a Conditional Use Permit after conducting a public hearing, provided the applicant provides evidence substantiating that all the

requirements of this ordinance relative to the proposed use are satisfied and demonstrates the proposed use also satisfies the following criteria:

A. The use is listed as a Conditional Use in the zone which is currently applied to the site;

Finding 6: Home occupations are listed as a Conditional Use in Section 603.3 of the Zoning Ordinance.

B. The use meets the specific criteria established in the underlying zone;

Finding 7: The purpose of the RR-5 Zone, as described by Section 601 of the Columbia County Zoning Ordinance, identifies residential uses as the predominant use of said zone, but also recognizes the appropriateness of other uses customary to the area, such as “farm and forest uses, churches and home occupations of a rural character.” As stated in Finding 6, home occupations are allowed as a conditional use in the RR-5 Zone if consistent with all criteria of Section 1503, Conditional Uses (See Findings 8 - 12) and Section 1507, Home Occupations (Findings 14 and 15).

The RR-5 standards generally apply to new development or land divisions. As discussed in Finding 2 previously, no new development or division of land is proposed as part of this application. Dogs will be housed in the basement of the existing single-family residence and will be exercised in a fenced yard just north of the residence. All existing development (used for the home occupation) is located at the east (Highway 30) end of the property. Per Findings 1 and 2 of this report, the proposal has been found to comply with the applicable standards of the RR-5 Zone. Staff finds that the criterion is met.

C. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements, and natural features;

Finding 8: The subject property is roughly rectangular in shape, approximately 5.34 acres in size and has direct frontage along the east property line on Highway 30 (Columbia River Highway). Access is obtained by an existing driveway from the Highway. The applicant submitted an approved Permit to Operate, Maintain and Use an Approach (from Highway 30) from the Oregon Department of Transportation (ODOT) as part of this application. The site is developed with one single-family dwelling, several farm-type accessory buildings, a septic system, and a well. The applicants propose to house dogs in the basement of their dwelling (see photos on page 3), which is located just 30 feet (at the nearest point) from Highway 30, 60 feet from the south property line, 200 feet from the north property line and approximately 500 feet from the west property line. Additionally, there is an existing exercise yard (enclosed with a solid wooden fence) located approximately 50 feet north of the dwelling, 500 feet from the west property line and abutting the north and east (highway) property lines.

The original proposal, denied by the Board of County Commissioners, did not utilize existing development of the site and proposed new development west of the dwelling, closer to surrounding residential development than the subject proposal. One reason that the original application was denied by the Board was based on findings that the location of the use on the site would maximize noise impacts interfering with other uses permitted in the zone. Findings suggested that there were a great number of residential dwellings that would suffer noise impacts from the proposed use and that no buffering was proposed to protect surrounding uses. By housing dogs in the basement of the existing dwelling, dogs will be located as close to Highway 30 as is possible considering the 30' structural setbacks of the RR-5 Zone. The noise

of barking dogs is therefore, not only buffered by the earth surrounding the basement walls, but by the noise of traffic traveling along Highway 30. There are seven windows in the basement of the dwelling (two on the north side, two on the east side, two on the south side and one on the west side). The window on the west side faces into the outside stairwell of the basement (see photo on page 7) and is buffered from the outside by the stairwell wall. Although the applicant would like the option to open basement windows for ventilation, opening the windows is not a necessity. Basements typically remain cool even in the summer months, and the applicant has indicated that portable air conditioners may be used to cool the area as well. Leaving the basement windows closed, although not a condition of approval, is an option to further reduce any perceived noise impacts from the kennel operation.

Likewise, although two exercise yards are proposed as part of this application, Staff recommends and the applicants agree that dogs should only be allowed outside if in the existing exercise yard at the northeast corner of the property. This area is fenced (see photos on page 6) and extends outward to the right-of-way line of Highway 30. Like the dwelling, this area is located as close to the highway as is possible. Solid wood fencing and highway noise will buffer the noise of barking dogs from surrounding properties.

Finally, findings for denial of the original proposal suggested that the use occupied high ground from which noise would radiate to surrounding properties. The site is relatively flat with a gentle westerly slope upward from the highway. Surrounding properties west of Highway 30 are located at similar elevations as the subject property, with significantly lower elevations only located east of the highway. Due to the location of the proposed indoor and outdoor dog areas, it appears that any noise amplified by the topography of the site, would be minimized or alleviated by the noise of the highway. Finally, according to the National Wetlands Inventory Map for St. Helens, OR, FEMA FIRM Panel # 41009C0465 C, and Scappoose-Spitzenberg BEAK Maps, there are no wetlands, areas of flood hazard, or hydric soils, and the property is not within any big game or other sensitive species overlay areas. Based on the use of existing improvements and structures, the proximity of the portion of the site proposed for use to Highway 30, and natural characteristics of the site, it appears that the subject property is suitable for the proposed use. Staff finds that the criterion is met subject to conditions.

- D. The site and proposed development is timely, considering the adequacy of transportation systems, public facilities, and services existing or planned for the area affected by the use;

Finding 9: The site and proposed development is timely, considering the adequacy of transportation systems, public facilities, and services existing or planned for the area affected by the use. Additional vehicle trips generated by the proposed dog boarding business will be minimal as customers will not visit the site, except on a limited basis. The applicants plan to shuttle dogs to and from their property, accounting for a usual two additional (round-trip) vehicle trips per day. The site has frontage on and direct access to Highway 30, and the applicants have submitted verification from ODOT that access to and from the highway at this location, for this use, is permitted. The closest driveways of neighboring properties are 250 feet to the south and over 400 feet to the north. As few customers and no employees will visit the site, the number of vehicle trips generated as a result of the proposed business will not significantly impact the road system or residents in the area.

Water is available to the site through an existing well and sewage is disposed of through an onsite septic system. According to the applicants, all waste generated by the kennel (extra food, feces, wood chips, etc...) will be bagged and disposed of through their regular garbage service with Hudson Waste

Management. The applicants have stated that if additional pick-up services are needed to keep up with waste generated from the business, arrangements will be made at that time. Utilities are available to the site and emergency services are provided to the site by the Columbia County Sheriff and the Scappoose Rural Fire Protection District. Neither existing transportation systems nor public facilities and services will be significantly impacted by the proposed home occupation. Existing facilities and services are sufficient to accommodate the use. Staff finds that the criterion is met.

- E. The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying district;

Finding 10: Primary uses of the RR-5 Zone, as outlined in Section 602 of the Columbia County Zoning Ordinance, are single-family detached dwellings, forest and farm uses, and uses accessory to said uses. The proposed dog kennel home occupation will be located substantially within the applicants' single-family dwelling and for limited periods of time within an outdoor fenced exercise yard. As proposed, dogs will be housed in the basement of the residence and will be taken outside in groups of four for 45 minute increments, two times per day. The applicants do not intend to house more than 12 dogs (in addition to their four personal dogs) on the property at any given time. Therefore outside time for (non-applicant owned dogs) would total 4 ½ hours per day. All areas proposed to be used for the kennel operation are located at the east end of the property, at least 500 feet from the west property line, and as close to Highway 30 as possible, considering setbacks. The existing residence is located approximately 30 feet from the Highway, 60 feet from the south property line and 200 feet from the north property line. The outside exercise yard abuts the east and north property lines and is over 100 feet from the south property line. Both the dwelling and exercise yard proposed for use are existing. The submitted site plan indicates the addition of a second exercise yard to the rear (west) of the dwelling, but a proposed Condition of Final Approval is included to disallow use of this area for dogs. Therefore, no new development is proposed as part of this application.

The original 2008 application proposed construction of a 4,600 square foot pole barn, west of the dwelling to house up to 30 dogs. This request was denied by the Board of County Commissioners, based in part on findings that the proposed pole barn was commercial in nature and not consistent with the sizes of barns and accessory buildings in the area, hence altering the character of the surrounding residential area. As no new construction is proposed, the proposed business will not aesthetically, or otherwise alter the character of the neighboring communities.

Testimony from surrounding property owners, specifically property owners residing on Shamrock Way, west of the site, and findings from the Board suggested that the original proposal would alter the character of the area in a manner which would substantially limit and/or impair the surrounding properties for residential use. This finding was based on noise impacts (from barking dogs) on neighboring properties. The applicants have modified the request to reduce the potential for noise impacts to surrounding residential properties by:

- Reducing the number of customer dogs housed on the property from 30 to 12.
- Removing any dog housing or play areas from being located west of the dwelling.
- Housing dogs in the basement of the dwelling.

- Reducing the amount of time that dogs are outside (based on the # of dogs) from 12 hours to 4 ½ hours.

As proposed, noise impacts to neighboring properties are mitigated by locating the dogs (inside or out) adjacent to Highway 30, or as close thereto. The exercise yard abuts the highway and is enclosed with a solid wooden fence, prohibiting dogs from seeing outside of the exercise area. The noise from barking in this area is significantly reduced by the continuous noise of the State highway. Similarly, dogs will be housed in the basement of the dwelling, where noise will be muted in part by the earth. Any noise disturbances inside will be heard firsthand by the owners/occupants of the dwelling and not by neighboring property owners. Furthermore, as discussed in Finding 8, although the applicant would like the option to open basement windows for ventilation, opening the windows is not a necessity. Basements typically remain cool even in the summer months, and the applicant has indicated that portable air conditioners may be used to cool the area as well. Leaving the basement windows closed, although not a Staff recommended condition of approval, is an option to further reduce any perceived noise impacts from the kennel operation. Also, by reducing the number of dogs on the property and therefore the hours that dogs are allowed outside, in addition to the location of the kennel facilities on the property and in relation to the highway, noise should not be a factor that precludes the residential use of surrounding properties. As stated by the applicant in regard to noise, "The property owners have four dogs of their own that are allowed outside during the day. No complaints have been received; therefore, it is not anticipated that four different dogs would have any different impacts."

Additionally, Columbia County adopted a Noise Control Ordinance in 1991 to formally address what constitutes excessive noise and the prohibitions thereof. The Ordinance differentiates between night and day, applying different noise standards to each. The more restrictive night time is between the hours of 10pm and 7am. As part of this approval, the applicant shall obtain a kennel license, and shall adhere to the standards of the Noise Control Ordinance. The applicant has stated that all dogs will be inside by 8:00 PM in the summer season and by 6:00 PM during the winter season.

Finally, the proposed home occupation appears to be compatible with the general character of the area. The site is located in an area of rural residential development, surrounded by RR-2 and other RR-5 zoned properties on the west side of the Columbia River Highway and a 414.91 acre property, zoned PA-38, on the east side of the highway. The adjacent residentially zoned properties are developed with single-family homes, but are located a significant distance from existing development proposed for use as a kennel. There is no evidence that the proposed home occupation will generate excessive traffic (see Finding 9), compromise existing or planned transportation facilities, or create parking problems (see Finding 4) for neighboring properties. Staff finds that this criterion is met subject to conditions.

- F. The proposal satisfies the goals and policies of the Comprehensive Plan which apply to the proposed use;

Finding 11: With regard to the County's Comprehensive Plan, Part X - Economy, is the most applicable. There are two goals of Part X:

1. To strengthen and diversify the economy of Columbia County and insure stable economic growth.
2. To utilize Columbia County's natural resources and advantages for expanding and diversifying the economic base.

The proposed home occupation recognizes these goals in that it will provide additional income for the residents of the property. The applicants intend to provide quality, safe, reputable, reliable pet care in a rural setting with a home atmosphere while providing high quality services and products. A dog daycare and boarding facility in the County will provide a service to Columbia County residents who need secure, clean, well maintained facilities for their dogs. The business will draw from its existing clientele in Beaverton and Portland and will likely also attract local business. Furthermore, home occupations help to strengthen and diversify the economy. Staff finds that the proposal satisfies the goals and policies of the Comprehensive Plan which apply to the proposed use.

G. The proposal will not create any hazardous conditions.

Finding 12: According to the applicant, there will be a 26 to 32 gallon waste disposal area, filled with cedar shavings, located in the basement of the dwelling. Solid waste will be picked up and bagged daily and liquid waste will be absorbed by said shavings. Cedar shavings, solid waste, extra food, etc... will be disposed of on a weekly basis through Hudson Waste Management. As a Condition of Final Approval, the applicant shall be required to obtain a kennel license from Columbia County Animal Control. Disposal of animal waste and cleanliness of kennel facilities is reviewed by the Animal Control Division. Kennels are subject to this review on an annual basis and shall comply with all applicable provisions of the Kennel Ordinance (including waste management). Although excessive and/or poorly managed dog feces could pose health and environmental hazards, it is unlikely given the scope of care and maintenance practices described by the applicants and oversight through the kennel licensing process. With proper employment of these waste management practices, health and environmental hazards will be avoided.

Next, the potential for dogs to get loose within the neighborhood or on the Highway could be perceived as a hazard. It is unlikely that a dog could escape from the property for several reasons. First, all kenneled dogs shall be required to be on a leash when not inside the basement of the dwelling or in the outside exercise yard. The dwelling is located approximately 50 feet from the designated outside exercise area. Additionally, customers will not be delivering dogs to the property or picking them up, reducing the potential for dogs to run freely from the vehicle onto other properties or into the highway. Finally, the applicants have indicated that dogs will only be allowed outside in groups of four for 45 minute increments. All outside time will be fenced and under the direct supervision of the applicants/property owners. The proposal will not create any hazardous conditions. Staff finds that the criterion is met subject to conditions.

Continuing with County Zoning Ordinance:

Section 1503 Conditional Uses

1503 .6 Design Review: The Commission may require the Conditional Use be subject to a site design review by the Design Review Board or Planning Commission.

Finding 13: This proposal is subject to Planning Commission review, but is not of such magnitude that a design review is necessary to ensure that public health, safety and welfare will not be compromised. Staff finds that a site design review is not warranted for this proposal.

Continuing with County Zoning Ordinance:

Section 1507 Home Occupations

- 1507 .2 Type 2: A Type 2 home occupation is reviewed as a Conditional Use by the Planning Commission and may be visible to the neighborhood in which it is located. In addition to the general criteria in Subsection 1507.3, the following criteria shall apply to a Type 2 home occupation:
- A. It shall be operated by a resident or employee of a resident of the property on which the business is located.
 - B. It shall employ on the site no more than five full-time or part-time persons.
 - C. Signs are permitted as per Section 1300 of the CCZO.

Finding 14: The applicants reside on the property where the home occupation will be located, and have indicated that no additional staff will be employed by the business. The applicant has not expressed an interest in placing a sign on the subject property at this time. Staff finds that the criterion is met subject to conditions.

- 1507 .3 The following criteria shall apply to all home occupations:
- A. A home occupation shall be operated substantially in:
 - 1. The dwelling; or
 - 2. Other buildings normally associated with uses permitted in the zone in which the property is located.
 - B. A home occupation shall not unreasonably interfere with other uses permitted in the zone in which the property is located.

Finding 15: The proposed dog boarding kennel will be operated substantially in the existing single family dwelling located on the subject property. As discussed throughout this report, kenneled dogs will be housed in the basement of the applicants' dwelling and will be outside in the existing exercise yard for no more than 4 ½ hours per day. Allowing dogs to be outside 4 ½ hours out of a 24 hour day meets the "substantially in" criteria.

Also, as discussed in Finding 10 of this report, it does not appear that the proposed home occupation will unreasonably interfere with other uses permitted in the zone in which the property is located. No new structures or exercise yards will be constructed as a result of the proposed application. Dogs will be

housed and exercised at the east end of the property near Highway 30. Any noise generated by barking dogs will be minimized or eliminated by the noise of traffic traveling along Highway 30. Dogs will only be allowed outside in groups of four and will be contained within a sight-obscuring solid wood fence. According to the applicant dogs will be never be outside past 8:00 PM. Furthermore, as a condition of final approval, dogs shall be kept inside between the hours of 9 PM and 6AM. There will be few customers and no employees visiting the site, and as such, no need for additional parking. Dwellings on Shamrock Lane, west of the site are located approximately 1,000 feet from the portion of the property proposed for use as a kennel and are buffered from the property by a wooded area (see photo on Page 6).

The dwelling south of the property is located at least 500 feet from the proposed use. The nearest dwelling to the proposed kennel is located on the adjacent property to the north. The applicant submitted documentation from neighbors along Pollard Drive (north of the site), including the adjacent property owner to the north, and the property owner directly south of the site indicating that they had no objection to the proposal as submitted (see attached petitions). See Finding 10 for a detailed discussion on why the proposal will not interfere with residential uses permitted in the RR-5 Zone. Staff finds that the criterion is met subject to conditions.

COMMENTS RECEIVED:

Scappoose-Spitzenberg CPAC: No Objection, as long as (1) Owners of dogs will only be allowed on-site to leave or pick up dogs only in emergencies and with an appointment; (2) Dogs will only be allowed outside the house twice a day for exercise (“play”), and each period shall not exceed 45 minutes; (3) No more than four dogs will be allowed outside at a time; and (4) There will be only one exercise area and that is to be in the fenced area to the northeast of the Viken home. Voted 4 to 1 to approve.

Scappoose Rural Fire District: No Comment

Oregon Department of Transportation: No Comment

County Sanitarian: No Objection; Any wastewater considerations will be evaluated at the time of kennel licensing using Kennel Ordinance criteria.

County Building Official: No Objection

County Counsel: No Comment

County Animal Control: No Objection

David Stoner (Owner of building where Viken’s current business is located): See Attached

Jeff and Mary Ann Specht (32972 Southwest JP West Road, Scappoose): See attached statement dated 6/21/10

Diane Dillard (124 N. 2nd Street, St. Helens): See attached statement dated 6/21/10

David and WynDee Wilson (55540 Shamrock Way, Scappoose): See attached statement dated 6/21/10

Kenny and Chris Vanderzanden (55590 Shamrock Lane, Scappoose): See attached statement dated 6/21/10

Alta Lynch: See attached statement dated 6/25/10

Public Testimony from 6/21/10 Planning Commission: See attached minutes

No further comments from agencies, citizens or otherwise have been received regarding this proposal as of the date of this staff report.

CONCLUSION, & RECOMMENDED DECISION & CONDITIONS:

Planning Commission Recommendation:

Based upon findings, contrary to Staff's findings, that CU 10-45 is not consistent with Section 1503.5(E) of the Columbia County Zoning Ordinance, which prohibits conditionally permitted uses from altering the character of surrounding areas in a manner that substantially limits, impairs, or precludes the use of the surrounding properties for the primary uses listed in the underlying district, the Planning Commission recommends **DENIAL** of CU 10-45.

Staff Recommendation:

Based on the facts, findings and comments herein, staff recommends **APPROVAL** of this **Conditional Use Permit (CU 10-45) for a Type II Home Occupation** at 55501 Columbia River Highway, further identified as Tax Lot # 4130-030-00100, subject to the following conditions:

1. This Conditional Use Permit shall become void unless the proposal has commenced in conformance with all conditions and restrictions established herein within the **2 year validity period**. Extensions of time may be granted by the Planning Director if requested in writing with the appropriate fee before the expiration date, given the applicants are not responsible for failure to commence with the proposal.
2. Kenneled dogs shall only be allowed outside if contained within the existing exercise yard or if on a leash or in a carrier. Kenneled dogs shall not be allowed on the property west of the existing dwelling and/or exercise yard.
3. Kenneled dogs shall only be allowed outside in groups of four, for 45 minute increments (each), two times per day. Total outside time for kenneled dogs shall not exceed 4 ½ hours.
4. The operator of the Home Occupation Business shall maintain proper dog kennel licensing from Columbia County Animal Control. Violation of the Columbia County Animal Control kennel licensing shall be considered inconsistent with this Conditional Use and will be subject to further review under conditions 11 and 12, below.

5. The Home Occupation Business shall comply with the Columbia County Noise Control Ordinance. In addition, all dogs shall be kept indoors between the hours of 9 PM and 6 AM.
6. There shall be no more than 16 dogs on the subject property at any given time.
7. The Home Occupation business shall be operated by a resident or employee of a resident of the property on which the business is located.
8. The Home Occupation business shall employ no more than five (5) people, regardless of whether or not they are full-time or part-time positions.
9. This Conditional Use Permit shall be applicable to this proposal only and shall not run with the land.
10. Before any sign is established for this Home Occupation business, approval and all applicable permits shall be obtained from the County. All applicable sign standards in effect at the time of County review shall apply.
11. The Department of Land Development Services reserves the right to review this application again in the future if it is determined that adjacent properties are being negatively impacted by the operation of this Home Occupation business.
12. Any departure from the conditions of approval and restrictions established herein shall subject this Conditional Use Permit to suspension or revocation in accordance with the procedures of the Columbia County Zoning Ordinance.

ATTACHMENTS:

Application
Site Plan
Letter from David Stoner
Petition Generated by Applicants
Written Testimony submitted at the 6/21/10 Planning Commission Meeting and after said meeting
6/21/10 Planning Commission Meeting Minutes
Zoning Map
Address Map
Vicinity Map