

May 14, 1999

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

850 Union Bank of California Building
900 Fourth Avenue
Seattle, Washington 98164
Telephone (206) 296-4660
Facsimile (206) 296-1654

ORDER ON RECONSIDERATION

SUBJECT: Department of Development and Environmental Services File No. **L97AC046**

WOODINVILLE WATER DISTRICT
Conditional Use Permit Appeal Decision

Location: 17238 NE Woodinville-Duvall Road, Woodinville

Applicant: Woodinville Water District, *represented by*
Robert Bandarra, General Manager
PO Box 1390
Woodinville, WA 98072-1390
Phone:(425) 483-9104/#303/Fax: (425) 483-0327

Rosemary A. Larson, Esq.
777-108th Avenue NE Ste 1900
Bellevue, WA 98009-
Phone:(425)455-1234/Fax:635-7720

Appellant: **Barbara Kelson**, *represented by*
PO Box 1343
Woodinville, WA 98072
Fax: c/o Tim Schriever (425) 485-1083

Brent Carson, Esq.
1011 Western Avenue, Ste 902
Seattle, WA 98104-1097
Phone:(206)382-9540/Fax:626-0675

King County: DDES, Land use Services Division, *represented by*:
Sherie Sabour and **Gary Kohler**
900 Oakesdale Avenue Southwest
Renton, WA 98055-1219
Phone: (206)296-7112/Fax 206-7051

900 Oakesdale Ave SW
Renton, WA 98055-1219
Phone:(206)296-7162/Fax 296-6613

1. As provided in Condition No. 13 of the Examiner's April 19, 1999 Revised Report and Decision, the Applicant Woodinville Water District has filed a motion for reconsideration or clarification of certain conditions. A written response to this motion has been received from the Appellant, Barbara Kelson.
2. The proposed changes requested by the Water District are discussed below in the sequence presented within the Applicant's brief:

A. Condition No. 1G, Indoor Overnight Parking.

The Applicant requests deletion of those portions of Condition 1G that require all district vehicles to be parked overnight within indoor facilities. The District also states that it is not feasible to construct a garage extension east of Building E, and suggests alternative locations. Ms. Kelson objects to the siting of an additional garage structure near the west property line. The District points out that after construction of the 10-foot concrete wall, such wall would screen vehicles parked adjacent to it.

In view of the infeasibility of placing a new structure east of Building E and the potentially greater off site impacts associated with the District's proposed alternative locations, Condition No. 1G is amended to delete the second sentence thereof and replace it with the following new language:

“If permanent indoor parking for all vehicles is not feasible, after the concrete wall is erected smaller vehicles may be parked in the existing spaces located near the west property line.”

B. Condition No. 8, Bollard Lighting

The Applicant's second request is that the requirement within Condition No. 8 mandating the use of bollard lighting in the front parking lot be deleted. The District suggests that such lighting is less effective than alternative forms and could create a safety hazard for evening use.

The third sentence of Condition No. 8 is revised to read as follows:

“Bollard lighting shall be used in the front parking lot to the extent feasible consistent with safety.”

C. Condition No. 10, Employee Limits

The District has requested the deletion of Condition No. 10, which limits the number of onsite employees to 35 without the issuance of a new conditional use permit. The Applicant argues that such a limitation is an improper exercise of conditional use permit authority. The Applicant further requests clarification that the condition as written would not apply to District Commissioners or part time employees.

The employee limitation stated in Condition No. 10, relates both to mitigation of site impacts in the areas of noise and traffic and is necessary to avoid creating incompatibility with the surrounding rural environment. As stated in KCC 21A.04.060, the purpose of the Rural zone is to maintain “ area-wide long term rural character” and to “ minimize land use conflicts”.

The size and intensity of site operations are in part a consequence of employment levels, as are the quantity and degree of offsite impacts. Placing reasonable limitations on on-site employment is an appropriate use of the County's police power to achieve legitimate land use policies and goals.

While the limitation contained within Condition No. 10 will be retained as a measure necessary to control off site impacts, the clarifications requested by the Applicant will be granted. Condition No. 10 is revised to read as follows:

“No expansion of site employment beyond 35 permanent employees shall occur without issuance of a new conditional use permit. The term ‘permanent employees’ does not include occasional use of the premises by District Commissioners nor employees who work for the District less than 6 months within any calendar year.”

D. Condition No. 11, Trailer Removal

The District has requested modification of Condition No. 11 to allow retention of the trailer on site for a reasonable period after occupancy of the new buildings.

Condition No. 11 is modified to read as follows:

“Prior to occupancy of any new buildings, all requirements of this permit shall be satisfied, including installation of new landscaping, and the existing barn shall be removed. The trailer unit shall be removed within 6 months of such occupancy.”

E. Condition No. 12, Retained Jurisdiction

The District objects to Condition No. 12 as stated within the Examiner's April 19, 1999 Revised Report on the basis that it exceeds the authority delegated to the Hearing Examiner and usurps the enforcement authority of the Department of Development and Environmental Services.

We agree that Condition No. 12 needs to be revised to make it more consistent with the framework of the Decision's findings and conclusions. On the other hand, KCC 20.24.080.B confers upon the Hearing Examiner broad power to impose such conditions as may be necessary to effect compliance with County ordinances and policies. Moreover, in light of the historic inability of the County to successfully limit the impacts of the District's non-conforming use to a reasonable level, retaining the capacity to modify permit conditions to conform to future circumstances is both appropriate and prudent. Since granting the conditional use permit is warranted only if future site impacts are mitigated and past abuses remedied, a provision for retained Examiner jurisdiction is also justified as a necessary implication of the express authority to authorize a conditional use.

Condition No. 12 is amended to read as follows:

“Three years after the date of issuance of this decision, LUSD shall submit to the Hearing Examiner a written report describing the Applicant’s progress in remedying deficiencies in the implementation of the 1990 conditional use permit and in mitigating the impacts identified by the instant permit decision, as measured by compliance with permit conditions and applicable ordinances. Copies of such report shall be provided to the Applicant and Appellant and to their respective attorneys by certified mail. Within 14 days of receipt of the LUSD report the Applicant or Appellant, or their successors in interest, may file with the Examiner written objections to the LUSD findings and request a hearing thereon.

The terms and conditions of this conditional use permit may be modified by the Examiner to the extent necessary to more effectively achieve compliance with permit requirements and applicable regulatory standards, and Hearing Examiner jurisdiction is expressly retained for such purposes.

F. Condition No. 1 Interpretation

The interpretation of permit Condition No. 1 as set forth on pages 9 and 10 of the District’s motion are consistent with the Hearing Examiner’s decision. We note that Ms. Kelson objects to the use of concrete blocks for the 10-foot wall, but in context of the distance and topography involved, after installation of Type1 screening west of the wall its visual impacts should be negligible.

3. As provided within Condition No. 13, for purposes of further appeals the date of decision for the April 19, 1999 Revised Report and Decision shall be the issuance date of this order.

ORDERED this 14th day of May, 1999.

Stafford L. Smith, Deputy
King County Hearing Examiner

TRANSMITTED this 14th day of May, 1999, to the following parties and interested person:

Joseph Allen
Stephen Benisuik
Barbara Kelson
Gaylen Page
Lee Beard
Mike Ruark

Bob Bandarra
Brent Carson
Rosemary Larson
Kenneth Pick
Hermina Ehrlick
Tim Schriever

John Briggs
Sherie Sabour
Gary Kohler
Tracy Daniels

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