

**BEFORE THE LAND USE HEARINGS OFFICER
OF CLACKAMAS COUNTY, OREGON**

Regarding an application Edward Christensen for conditional use approval for a dog boarding kennel and nonconforming use approval of an existing structure on a 5.25-acre parcel at 27320 S. Pelican Court in unincorporated Clackamas County, Oregon) **FINAL ORDER**
) **Case No. Z0054-24-C**
) **and Z0055-24-NCU**
) **(Huffman K9)**

A. SUMMARY

1. Edward Christensen acting on behalf of the property owners, Eve Godbold and Jensen Huffman (the “applicants”), requests conditional use approval to establish a dog boarding kennel that will accommodate up to 16 dogs. Eight kennels are proposed within an approximately 750 square foot portion of an existing building and eight other kennels will be in a proposed 650 square foot building. Each kennel includes an attached outdoor area.

2. The applicants also request Nonconforming Use approval of an existing structure that does not conform to the minimum setback requirements of the current regulations. The applicants propose to use a portion of the nonconforming structure for one of the sets of eight dog kennels.

3. The applicants currently conduct dog training on the site, and will continue to do so. Dog training is a permitted use on the site. A conditional use permit is not necessary for the frequency and size of dog training classes being proposed as discussed below.

4. The proposed kennel and nonconforming structure are located on a 5.25-acre parcel located at 27320 S. Pelican Court; also known as tax lot 1600 Section 16 and tax lot 00523, Section 20, Township 4 South, Range 1 East, of the Willamette Meridian, Clackamas County (the “site”). The site and all surrounding properties are zoned EFU (Exclusive Farm Use).

5. Clackamas County Hearings Officer Joe Turner (the “hearings officer”) held an online public hearing about the application. County staff recommended that the hearings officer approve the application, subject to conditions. See the Staff Report and Recommendation to the Hearings Officer dated June 27, 2024, (the “Staff Report”). The applicants accepted the findings and conditions of approval as recommended by County staff, as amended at the hearing. One person testified orally in opposition to the application. Other persons testified in writing, in opposition and in support. Contested issues include:

- a. Whether the proposed kennel facility is allowed in the EFU zone;

b. Whether the alleged accessory residential uses (apartments) on the site are relevant to this application;

c. Whether the proposed kennel facility will force a significant change in or significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use;

d. Whether impacts from the applicants' existing dog training use are relevant to this application for a dog kennel facility;

e. Whether traffic generated by the proposed kennel use will create a hazard;

f. Whether the proposed kennel use will “[a]lter the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties for the primary uses allowed in the [EFU zone]” (ZDO 1203.03 D) due to: increased traffic and associated speeding, dust, and road wear; noise; sanitation and pollution; and allegedly inadequate fencing;

g. Whether the proposed alleged impacts on property values is relevant to the applicable approval criteria;

h. Whether the existing accessory building was legally established on the site prior to the effective date of restrictive zoning regulations and setback requirements; and

i. Whether the subsequent addition to the existing accessory building was legally constructed.

6. Based on the findings provided or incorporated herein, the hearings officer finds that the applicants sustained the burden of proof that the proposed use does or can comply with the relevant approval standards of the Clackamas County Zoning and Development Ordinance (the “ZDO”), provided the applicants comply with conditions of approval recommended by County staff or warranted by the facts and law to ensure the proposed use does comply in fact with those standards. Therefore the hearings officer approves the application subject to the conditions at the end of this final order based on the findings and conclusions incorporated herein.

B. HEARING AND RECORD HIGHLIGHTS

1. The hearings officer received testimony at the public hearing about this application on June 27, 2024. All exhibits and records of testimony are filed at Clackamas County Department of Transportation and Development. At the beginning of the hearing, the hearings officer made the declaration required by ORS 197.763. The hearings officer

disclaimed any *ex parte* contacts, bias, or conflicts of interest. The following is a summary by the hearings officer of selected testimony at the public hearing.

2. County planner Melissa Lord summarized the Staff Report and her PowerPoint presentation (Exhibit 40).

a. She noted that the applicants are requesting approval of a conditional use permit for a proposed kennel to board up to 16 dogs on the site. The applicants currently conduct dog training on the site, which is a permitted use in the EFU zone. The applicants propose to construct a new 650 square foot building on the site to house eight of the proposed dog kennels. The remaining eight kennels will be located in a portion of an existing structure on the site. Each kennel will include an outdoor run which the boarded dog can access during the daytime.

i. Dog kennels are listed as a conditional use in the EFU zone. Therefore, the application complies with ZDO 1203.03(A).

ii. The site is suitable for the proposed kennel use. ZDO 1203.03(B). The kennel will occupy less than 2,000 square feet of the 5.25-acre site. There are no wetlands, steep slopes, or other environmental issues on the site. The existing road is adequate to serve the use.

iii. The kennel use will not alter the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties for the primary uses allowed in the zoning district(s) in which surrounding properties are located. ZDO 1203.03(C). The applicants currently perform dog training on the site, which is a permitted use in the EFU zone pursuant to ORS 215.283(1)(x) and ZDO Table 401-1. The proposed kennel is intended to reduce the amount of traffic generated by training activities, as dog owners will be able to bring their dogs to the site and drop them off for multi-day trainings. Currently, such owners must return to the site daily to retrieve their dogs and bring them back for additional training the following day. No additional outdoor lighting is proposed for the kennel. The applicants proposed to locate the new kennel building near the existing structures in the eastern portion of the site, reducing the visual impact of the use. Opponents argued that the kennel use will generate the following adverse impacts:

(A) “The kennel use will impact livestock in the area, causing anxiety.” However, there is no evidence that the applicants’ existing dog training activities have any impacts on livestock in the area. The applicants have livestock (goats and birds) on the site that are not affected by the dogs. Boarded dogs will be confined to individual kennels when they are not undergoing training.

(B) “Speeding traffic, increased wear and tear of the roadway, and dust on S. Pelican Court.” S. Pelican Court is a privately maintained rural local road with a gravel surface. The proposed kennel will likely reduce the volume of

traffic on this road, as dog owners can leave their dogs at the site for multi-day training sessions without having to return to the site on a daily basis.

(C) “Noise from barking dogs.” The applicants proposed to confine the dogs inside the kennel at night, which will reduce the impact of any barking. She requested the hearings officer add a condition of approval to that effect.

(D) “Collection and management of dog waste on the site and the potential that stormwater runoff may carry dog waste onto adjacent properties and contaminating crops.” The applicants submitted a waste management plan for the proposed kennel. The applicants’ staff patrol the site daily to collect waste in plastic bags. The applicants’ staff place the collected waste into containers that are later picked up by the local solid waste provider.

b. The applicants are also seeking recognition of the existing structure as a nonconforming use, as the structure does not comply with current setback requirements. The structure is setback 5.3 feet from the rear property line of the site. The current Code requires a minimum ten-foot rear yard setback for this type of accessory structure. Zoning regulations, including setback requirements, became effective in this area in September 1976. Tax assessor records show the building existing as of 1953. The existing structure is visible on the site in an aerial photo of the site taken in August 1976. (Exhibit 40 at 8). Therefore, the structure predates current zoning and setback requirements and it is allowed to continue as a nonconforming use. The building was expanded sometime between 2005 and 2010 without County permits. However, the addition is located 12.5 feet from the rear property line, in compliance with current setback requirements. The applicants propose to use a roughly 750 square foot portion of the addition for eight of the proposed dog kennels. The kennel use will be located entirely within the building addition. Therefore, the addition and new use, both of which are expansions of the existing nonconforming use, will not result in any greater impacts from the nonconforming structure.

i. A building permit was likely required for the prior addition to the nonconforming structure, unless the addition was subject to an agricultural exemption. Condition of approval 10 in the Staff Report requires the applicants to obtain any required permits for the building addition.

c. She noted that the building design standards of ZDO 1105.03.A only apply to building façades that are visible from a public or private street and to all facades where the primary entrance is located. In this case, the proposed building will not be visible from the street. Therefore, she requested the hearings office modify proposed condition of approval 8 to limit compliance with the façade standard to the front of the building where the primary entrance is located.

3. Engineer Ed Christensen and property owner Jensen Huffman appeared in support of the application.

a. Mr. Christensen testified that S. Mark Road is a County maintained public road. S. Pelican Court is also a privately maintained County road. Based on section 250.1.1 of the County Road Standards, the design speed for rural local road is 25 mph. He argued that the County should be responsible for maintenance of this road. The applicants have filled potholes on S. Pelican Court and contributed funds towards the cost of maintaining the road. They were only asked to contribute maintenance funds on three occasions and they always did so. Some of the residents of S. Pelican Court refused to contribute.

i. He testified that the property owners operate a high-end dog training facility on the site. They train police and other professional dogs in six week classes. Currently the dog owner must make four trips per day to the site; driving to the site to drop off the dog, then returning home, then driving back to pick up the site from the site, and driving home again. The proposed kennel will allow dogs to remain on the site overnight during training, allowing the own dog owner to drop off the dog for several days or weeks of training before returning.

ii. The owner of the property east of the site expressed concerns that rain falling on the site would transport dog feces onto their property. However, the neighbor frequently sprays herbicides on their property without advising the neighbors beforehand.

iii. The applicants do not allow dogs that are training or boarding on the site to roam free. They are always under control of their owner or a trainer. Dogs on the site are not allowed to bark. Barking dogs are immediately corrected by their owner or a trainer. The applicants have 12 bark collars that prevent dogs from barking. If dogs are barking in the kennel at night the owners immediately put a bark collar on the dog. He has never heard dogs barking on the site while he was there undergoing training with his own dog. The kennels and outdoor runs are fully enclosed so the dogs cannot see each other or anything on the site, which reduces their propensity to bark.

iv. The applicants waste management plan is consistent with EPA requirements and operates the same as a public dog park. There are dog waste stations throughout the site with collection bags. When a dog defecates the owner or trainer immediately collects it in a bag that is then disposed of in the container. The applicants have four 50 gallon solid waste containers, two of which are for dog waste. The local solid waste provider collects the waste for disposal every week. The applicants also have two technicians whose job it is to patrol the site daily to collect any excess waste and to clean the kennels.

v. All dogs are kept inside the fully enclosed kennel building at night. The applicants are currently in the process of obtaining bids to insulate the kennel buildings to dampen noise as well as to maintain healthy temperatures inside the building.

The applicants are willing to accept a condition of approval requiring the installation of insulation.

vi. The Fire District inspected the site and approved the existing access. The applicants trimmed trees as necessary to provide a minimum 13.5 feet of vertical clearance for emergency vehicles. The applicants will widen the driveway by 2.5 feet to provide minimum horizontal emergency access and rebuild the existing emergency pullout. There is adequate space on the site to allow a fire truck or other emergency vehicle to turn around.

vii. The applicants are installing a fence on the north boundary of the site. They will also plant additional vegetation to provide screening where there are existing gaps.

viii. He waived the applicants' right to submit a final written argument.

b. Mr. Huffman testified that they also use a veterinary soap solution to wash the kennels. They clean the kennels with mops and dispose of the liquid into a sink. They clean the kennels weekly with a product that kills viruses. The outdoor kennel runs are covered so there is no runoff from inside the kennels when it rains.

i. The dogs are inside the fully enclosed kennels, with the doors to the outside runs closed, from 8:00 p.m. until 8:30 a.m. They control barking inside the kennels with the use of an ultrasonic sound device that generates a noise audible to the dogs when they bark. They also use bark collars when necessary.

ii. The "apartment" noted by neighbors existed in one of the accessory buildings when they purchased the property. They only use it for training purposes, not for residential uses. They hide scent devices inside the apartment to train detection dogs.

iii. He testified that, based on Google Earth images, Ms. Oylear's residence is 0.3 miles (a seven minute walk) from the site. The owners of the intervening properties own four to six dogs. The owner of one of the intervening properties owns four dogs. Those dogs can be heard barking in the video they submitted. The owner of the intervening parcel abutting the site owns a small rat terrier dog that barks constantly. Ms. Oylear may be able to determine the direction from which the barking she hears is coming, she cannot tell if it is from the site or one of the intervening properties.

iv. They have contributed funds towards the maintenance of S. Pelican Court in the past and they are willing to continue doing so in the future. The proposed kennels are intended to reduce the number of vehicle trips traveling to the site. Currently the owner of a dog that is enrolled in a three week training program must travel back and forth to the site four times a day for three weeks. The kennels will allow dogs to

remain on the site for training, with the owner returning at the end of the three period to collect their dog. Some owners periodically come to the site for training with their dogs, but most do not return until the end of the entire three week session. He also conducts bi-weekly training sessions. But those dogs are not kenneled on the site.

4. Katherleen Oylear testified that she frequently hears the sound of barking dogs coming from the site. She argued that the applicants' dog training business and proposed dog kennel are inconsistent with the quality of life and agricultural living in this area. These uses generate significant traffic on S. Pelican Court. Dog owners speed down the road, raising dust, throwing gravel off the road, and creating potholes. She did not see the accessory structure when she moved to the site in 1975.

5. At the end of the public hearing, the hearings officer closed the record and announced his intention to approve the application subject to recommended conditions as modified at the hearing.

C. FINDINGS

1. ZDO SECTION 401 EXCLUSIVE FARM USE (EFU) DISTRICT

- A. **401.04 Uses Permitted:** Uses permitted in the EFU district are listed in Table 401-1.

***Finding:** Commercial dog boarding kennels are a Conditional use, subject to ZDO Section 401.05(A)(1). The applicants have accurately applied for a conditional use land use permit for the dog boarding kennel. Dog training classes that meet the standards of Subsection 401.05(D)(6) are allowed outright; however, if the training classes exceed those limitations, then a conditional use permit would then be required. The applicants provided a signed affidavit from the property owner acknowledging the limitations of dog training set forth in Subsection 401.05(D)(6) and agrees to stay within those limitations. Therefore, a conditional use permit is not necessary for the dog training activities on site, and is required for the proposed 16-dog boarding kennel.*

Neighbors assertions that the applicant has two residential apartments on the site are not relevant to this application, as no residential uses are proposed with this application. The applicant testified that the apartment existed when they purchased the property and they do not rent the apartment; they use it for dog training purposes. If such accessory residential use is occurring it would likely be a violation, as accessory residential use is generally prohibited in the EFU zone, unless it was established before the date of restrictive zoning. Any such violations can be addressed through the County Code Enforcement process.

This criterion is met.

- B. **401.05(A)(1) General approval criteria:** Uses may be approved only where such uses will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use, and will not significantly increase

the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest uses.

Finding: *The kennel will reduce the number of vehicle trips on Pelican Court, a gravel road, because the applicants' clients will not have to travel back and forth to the site each day when their dog is participating in a multi-day training session. Neighbors argued that the presence of dogs on the site will create anxiety for livestock. (Exhibit 12). However, they failed to provide any support for that assertion. Dogs are common in EFU zones and on properties with livestock. As noted in the testimony at the hearing, several area residents also own dogs. The applicants state that dogs are not permitted to roam free or bark while on the premises; therefore, they would pose no threat or harm to any surrounding livestock if present. The business is not associated with farm or forest uses and will not pose as competition in the same market that farmers or forestry operations do business in. The dog kennel will not impact farming costs or the price of farm products. This criterion is met.*

- C. **401.05(D)(6) Dog training classes:** Dog training classes, which may be conducted outdoors or in preexisting farm buildings that existed on January 1, 2013 when then number of dogs participating in training does not exceed 10 dogs per training class; and, the number of training classes to be held on-site does not exceed six per day.

Finding: *The applicants have provided a signed affidavit attesting to the fact that they will operate their dog training classes within the parameters of this Subsection. The dog training facility is in a building shown on the site plan that has existed on the property since at least 1953 according to Clackamas County Assessment and Taxation records, and certainly since August 1976 based on review of aerial photos (Exhibit 40 at 8). The written application materials state that the dog training facility will be located within the same existing building where the applicants are proposing to have eight dog kennels*

Since the applicants claim that their dog training classes will comply with this Subsection, a land use permit is not required and this subsection is therefore not applicable to the land use application being reviewed. Staff recommends that the applicants clarify which of the two buildings the dog training classes will occur within (or both) for consistency.

A condition of approval is warranted to ensure that the dog training classes continue to comply with the limitations of this section, and if they exceed these limits then a conditional use permit must be obtained.

- D. **401.07 Dimensional Standards:** This subsection establishes the minimum required setbacks from property lines for all structures.

Finding: *The minimum setbacks are met, or will be met with the establishment of the nonconforming use application, as described below.*

| | Standard | Existing | Proposed | Compliant |
|---------|----------|-----------|-----------|-----------|
| Minimum | 30 feet | 350+ feet | 350+ feet | Yes |

| | | | | |
|------------------------------------|-----------------------------------|----------|----------------------|------|
| front setback (west) | | | (no change) | |
| Minimum side setback (north/south) | 10 feet | 10 feet | 10 feet (no change) | Yes |
| Minimum rear setback (east) | 10 feet (for accessory buildings) | 5.3 feet | 5.3 feet (no change) | Yes* |

** The rear setback of the existing structure established in 1933 will not be altered by the proposed conditional use. Based on the County’s review of aerial photos, an addition onto this building was completed sometime between 2005 and 2010. Welkin Engineering surveyed the property and determined that the corner of the new addition to the building is 12.6 feet from the rear property line. No changes (alterations, additions, etc.) are proposed to the building, rather the kennel use will be located within the existing structure. Approval of this land use permit establishes the nonconforming setback of the existing building. Further discussion on the nonconforming use is provided later in this Final Order.*

As demonstrated on the site plan, the new/proposed eight-dog kennel building will comply with all minimum setback requirements of the EFU district.

2. ZDO SECTION 1203.02 CONDITIONAL USES

A. **1203.03(A):** The use is listed as a conditional use in the zoning district in which the subject property is located.

***Finding:** The subject property is within the Exclusive Farm Use (EFU) zoning district. Section 401 of the ZDO controls land uses in the EFU district; Subsection 401.04 lists permitted uses in the EFU district including “dog training classes”, which is a permitted use, and “commercial dog boarding kennel”, which is a conditional use. State law, ORS 215.283(1)(x) requires that the County allow dog training in EFU zones and ORS 215.283(2)(n)(A) authorizes the County to allow “commercial dog boarding kennels.” This criterion is met.*

B. **1203.03(B):** The characteristics of the subject property are suitable for the proposed use considering size, shape, location, topography, existence of improvements and natural features.

***Finding:** In addition to the findings made in the applicants’ narrative, the hearings officer adds the following:*

The subject property is approximately 5.25 acres in size and is currently developed with a dwelling and a number of outbuildings. A portion of an existing building is proposed to be used for eight dog kennels; and the applicants propose to construct a new building to house the other eight kennels. The dog kennels will be within a structure; and each kennel will have a small attached outdoor area. Eight dog boarding kennels would be located within an approximately 750 square

foot portion of an existing building; each kennel in this building includes a four-foot by six-foot outdoor area. Eight dog kennels will be in a proposed new 650 square foot building; each kennel includes an eight-foot by five-foot outdoor area. The dog kennel use will occupy a very small portion of the overall site.

The property is relatively flat, and is largely bordered by trees on all sides. The lot is a rectangle, longer than it is wide (approximately 610 feet long by 375 feet wide).

The site is generally located southeast of the intersection of S. Barlow Road and S. Mark Road. S. Pelican Court is a dead-end gravel road provides access to the site and other properties. The site contains no mapped wetlands, streams, or protected habitat areas; however, the Department of State Lands (DSL) shows that this property may include areas of hydric soils. DSL was sent a copy of the land use application to review. DSL did not respond.

The location, size, shape, topographic, natural and developed characteristics of the property are suitable to accommodate the continued use of the public utility facility. When considering the characteristics of the subject property, this criterion is met.

- C. **1203.03(C):** The proposed use is consistent with Subsection 1007.07, and safety of the transportation system is adequate to serve the proposed use.

***Finding:** Staff reviewed the proposal for compliance with 1007.07. The findings are included below. This criterion is met.*

- D. **1203.03(D):** The proposed use will not alter the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties for the primary uses allowed in the zoning district(s) in which surrounding properties are located.

***Finding:** The site is in the EFU zoning district and is surrounded by other properties in the EFU district. Primary uses of the EFU district are included in ZDO Section 401, and primarily include farming and forestry uses. Pelican Court is the access road to the Canby-Needy Ranchettes subdivision. The subdivision was platted in 1972 and lends itself to a rural residential neighborhood of lot sized between two and ten acres. The surrounding area is similarly developed with rural homesites and farm land.*

Increased Traffic

Neighbors expressed concerns with increased traffic on S. Pelican Road, which will increase issues with speeding, dust, and wear and tear on the roadway. The applicants currently operate a dog training facility on the site, which is a permitted use in the EFU zone. That use generates additional traffic to and from the site as dog owners travel to the site, drop off their dogs for training, and return home, repeating the same process in the evening after training is completed and returning the next day for additional training. All traffic on S. Pelican Road generates dust and increases the need for maintenance of the

roadway. In addition, some drivers travel at higher speeds, which increases the risk for other drivers and pedestrians as well as increasing dust and wear and tear on the roadway. Reasonably prudent drivers will travel at reasonable speeds consistent with the condition of the roadway. Unfortunately, not all drivers are prudent. However, there is no evidence that the development proposed in this application will contribute a disproportionate share of imprudent drivers. Dog training is a permitted use. Therefore, traffic generated by this use is allowed and the hearings officer has no authority to impose conditions of approval regulating the operation of the existing dog training use.

The applicants propose that having a dog kennel will reduce the number of vehicle trips to and from the subject property, as dogs can be boarded on the site for multi-week training sessions, which will reduce the amount of traffic on area roads, the amount of dust generated, and the need for maintenance of the roadway. Although some dog owners may come to the site for training with their dogs, the boarding facility will eliminate the need for dog owners to return to the site to retrieve their dogs every day of a multi-week training session.

Noise

Neighbors expressed concerns with noise generated by dogs barking on the site. The applicants submitted a noise study (Attached to Exhibit 2a) demonstrating that the sound of dogs barking on the site will not exceed the County's noise standards, set out in Section 6.05.050 of the Clackamas County Code. Barking noise may be audible on surrounding properties, but it will comply with County noise standards. In addition, as noted above, the hearings officer has no authority to regulate noise from the applicants' dog training facility, including the use of music and training commands, as that is a permitted use. Dogs in the proposed kennels will be contained within an enclosed building, which will reduce the impact of any barking noise. Many agricultural activities (livestock, tractors and other equipment, etc.) generate noise. The hearings officer finds that noise from this site will be consistent with this type of use. In addition, as noted at the hearing and in the written testimony, barking dogs are common in the rural area.

In addition, the applicants testified and provided evidence (Exhibit 24) that much of the barking noise cited by neighboring residents is actually coming from dogs on properties around the site. Dogs that are undergoing training on the site are not allowed to bark. The kennel buildings will be equipped with ultrasonic bark controllers and the applicants have multiple bark collars they can use if necessary to control barking. The applicant proposed to insulate the kennel buildings to limit sound transmission outside the building. A condition of approval is warranted to that effect.

Based on the above, the hearings officer finds that noise from the proposed kennel facility will not alter the character of the area in a manner prohibited by the Code.

Sanitation and pollution

The hearings officer finds that the proposed kennel use will not create a significant risk of contamination or odors. As noted above, the existing dog training use is permitted and the hearings officer has no authority to impose conditions on that use. This review is limited to the proposed kennel facility. Dogs in the kennel will be confined inside of a building or covered run, where feces and urine are not exposed to rain and runoff. The applicants staff pick up feces by hand and store it in waste containers which the local solid waste provider collects and disposes on a weekly basis. Dog feces are not disposed of in the septic system serving the site. The applicants staff clean the kennels with mops, rather than hoses that could generate runoff. Dog waste may generate odors, however, given that waste is contained in plastic bags which are then placed in trash containers, combined with the the size of the site, any odors are unlikely to be detectable offsite. In addition, such odors are not inconsistent with the character of the EFU zone, where a wide variety of potentially odor generating agricultural activities are allowed.

Property Values

Alleged property value impacts of the facility are not relevant to the applicable approval criteria. The Land Use Board of Appeals (“LUBA”) held that “[p]otential loss of property value does not affect the use of surrounding properties for residential and other primary uses within the meaning of ZDO 1203.01(D). . .” Tylka v. Clackamas County, 34 Or LUBA 14 (1998). The hearings officer agrees with and adopts that conclusion.

Fencing

Several persons argued that the existing fencing on the site is inadequate to keep dogs confined to the site, noting that the applicants’ livestock and their “livestock dog” have escaped onto neighboring properties in the past. While this is unfortunate, it is not relevant to review of the proposed kennel, as the applicant’s livestock are unrelated to this proposal. Neighbors have adequate recourse to address this issue through state laws regulating livestock trespass and the County’s Dog Control regulations, Title 5 of the Clackamas County Code, which regulates loose dogs. Fencing is not necessary for the proposed kennel use, as dogs will be confined to the fully enclosed kennels.

Physical and Visual Character

The addition of the proposed 650-square foot kennel building will not change the physical and visual characteristics of the surrounding area. The building will be located at the rear of the property, clustered near the other existing structures on site.

Based on the above, the hearings officer finds that the proposed development will not alter the character of the surrounding area, and will not substantially limit, impair or preclude the use of surrounding properties for the primary uses allowed. This criterion is met.

- E. **1203.03(E):** The proposed use is consistent with the applicable goals and policies of the Comprehensive Plan.

***Finding:** The Comprehensive Plan designation for this property is Agriculture, and Agriculture goals and policies are provided for in Chapter 4. While that applicants' narrative does not address how they will comply with Chapter 4 specifically, their application overall does generally address the goals and policies. The proposed use will not significantly impact the surrounding property owners' ability to farm their land, and will not significantly impact the cost of accepted farming practices. The proposed 650 square foot eight-dog kennel structure is of insignificant size and impact to the subject property or the surrounding property and is clustered onsite near existing development thereby leaving the majority of the site undeveloped. This criterion is met.*

- F. **1203.03(F):** The proposed use complies with any applicable requirements of the zoning district and overlay zoning district(s) in which the subject property is located, Section 800, Special Use Requirements, and Section 1000, Development Standards.

***Finding:** Compliance with Section 800 is not applicable. Compliance with Section 1000 is addressed in the findings below.*

3. ZDO Section 1000 Development standards

Not all review subsections in ZDO Section 1000 are applicable. Below is an evaluation of the criteria that are applicable to the proposed conditional use.

A. Section 1002, 1003 and 1004 – Protection of Natural Features, Hazards to Safety and Historic Protection:

Section 1002 addresses the protection of various natural features including hillsides, the excessive removal of trees prior to development, the protection of trees and wooded areas through development, river and stream corridors, the winter ranges of deer and elk populations, certain open spaces near Mount Hood, significant natural areas, and significant landforms and vegetation. Section 1003 addresses various hazards to safety including flood, soils, fire, and mass movement areas. Section 1004 addresses standards related to historic preservation.

***Finding:** These Sections are not applicable to the subject property as the site does not contain steep slopes, waterways, or other listed features and no tree removal is proposed.*

- B. **Section 1005 – Sustainable Site and Building Design:** Section 1005 addresses the development of sites and design of buildings so as to efficiently utilize land, create lively, safe, and walkable centers, support the use of non-auto modes of transportation, reduce impact of development of natural features, utilize opportunities arising from a site's configuration, design illumination so dark skies are maintained when possible and accommodate the needs of users of

developments. It applies to institutional, commercial, and industrial development; multifamily dwellings; and developments of more than one, two- or three-family dwellings.

Subsection 1005.02 – General Site Design Standards establishes standards for the sites of commercial, industrial, and multifamily developments and addresses standards for the placement and orientation of buildings, on-site pedestrian circulation, the placement and orientation of building entrances, and other use- and zone-specific standards.

***Finding:** The proposed dog kennel will be located within a 750 square foot portion of an existing building and a proposed 650 square foot building. The proposed new construction will be located in the northeast portion of the property, clustered near the other existing buildings.*

The site is accessed from Pelican Court by a gravel driveway and maneuvering area. Due to the nature of the development and use proposed, the standards of this subsection are largely not applicable. This criteria is met.

Subsection 1005.03 – Building Design provides standards for building facades, entrances roof design, exterior building materials, the screening of mechanical equipment, and other use- and zone-specific standards.

***Finding:** The standards of Subsection 1005.03(A) generally apply to building facades visible from a public or private street or accessway, or to the façade of the building with the primary entrance.*

The proposed 650 square foot kennel building does not necessitate compliance with Subsection (A) due to the small size of the building; there will not be any long or massive walls, the small size of the building does not need articulation or any other design element to enhance the human-scale of the design. The building will house eight dog kennels, and therefore the building does not need design flare to be consistent with the proposed use. Building materials and roof materials for the proposed kennel building were not identified in the submitted application materials; a condition of approval is included to ensure compliance with this criteria. Since many of the building material standards of Subsection 1005.03(E) are discretionary, the condition of approval is limited to an objective list of acceptable building materials. The proposed building will not be visible from public or private streets. Therefore, pursuant to ZDO 1005.03(A), these standards only apply to the façade of the building where the primary entrance is located.

Due to the nature of the development proposal, many of the standards of this subsection are not applicable. As applicable, this criteria is met.

Subsection 1005.04 – Outdoor Lighting provides standards to ensure that onsite lighting is compatible with the site and surrounding uses while preventing light trespass and pollution.

Finding: No new outdoor lighting is proposed with this land use application. This subsection is not applicable.

C. **Section 1006 – Utilities, Street Lights, Water Supply, Sewage Disposal, Surface Water Management, and Erosion Control.**

Section 1006 addresses the provision of appropriate infrastructure for utilities, water supply, and sewage disposal, as well as the management of surface water and site erosion.

1006.03(E) Water Supply. The following standards apply outside the Portland Metropolitan Urban Growth Boundary, Government Camp, Rhododendron, Wemme/Welches, Wildwood/Timberline, and Zigzag Village:

Finding: The applicants specified that they have a lawful water source for the proposed dog kennel use. An existing well will serve the proposed use; as described in the applicants' submitted application materials the well may be used for this commercial use. This criterion is met.

1006.06 Surface Water Management and Erosion Control. The following surface water management and erosion control standards apply:

Positive drainage and adequate conveyance of surface water shall be provided from roofs, footings, foundations, and other impervious or near-impervious surfaces to an appropriate discharge point.

The requirements of the surface water management regulatory authority apply. If the County is the surface water management regulatory authority, the surface water management requirements of the Clackamas County Roadway Standards apply

Approval of a development shall be granted only if the applicants provides a preliminary statement of feasibility from the surface water management regulatory authority. The statement shall verify that adequate surface water management, treatment and conveyance is available to serve the development or can be made available through improvements completed by the developer or the system owner.

The service provider may require a preliminary storm water management plan, storm drainage report, natural resource assessment and buffer analysis prior to signing the preliminary statement of feasibility

The statement shall be dated no more than one year prior to the date a complete land use application is filed and need not reserve surface water treatment and conveyance system capacity for the development.

Finding: Clackamas County Development Engineering is the surface water management authority for the subject property. A preliminary statement of feasibility was provided in the application materials confirming that there is adequate surface water management, treatment, and conveyance to serve the development or can be made available through improvements completed by the developer. This criteria is met.

- D. **1007.07 Transportation Facilities Concurrency.** Shall apply to the following development applications: design review, subdivisions, partitions, and conditional uses. Approval of a development shall be granted only if the capacity of transportation facilities is adequate or will be made adequate in a timely manner.

***Finding:** Compliance with 1007.07 is required pursuant to Section 1203.03(C). The applicants are proposing to add 16 dog kennels onto the subject property as a use that is generally connected to their dog training business. The kennels will allow dog owners to leave their dogs on site for multi-day training classes, rather than require them to pick up and drop off their dog at the start and end of each day. To that effect, use of the transportation system may be decreased as a result of this proposal. The Clackamas County Development Engineering division submitted comments and proposed conditions of approval dated June 13, 2024. Engineering identified no barriers to meeting this criterion, as conditioned. Since then, there has been no new evidence that suggests that the transportation system is inadequate to support the proposed use.*

This criterion is met.

- E. **Section 1009 Landscaping.** Section 1009 seeks to ensure that sites are design with appropriately selected, designed, installed, and maintained landscape materials and that landscaped areas are used for appropriate purposes.

***Finding:** In the EFU district, there is no minimum landscaped area required by Table 1009-1, however Section 1009 is applicable to conditional uses. The hearings officer finds that buffering (subsection 1009.04) is not necessary are necessary to mitigate impacts of the dog kennel/conditional use. Due to the nature of the dog kennel, the use is primarily indoors. Dogs will have a small outdoor space attached to their indoor kennel, yet when considering the size of the kennel facilities proposed and the existence of vegetation around the property perimeter, there will be a limited visual impact to surrounding properties and additional landscape buffering is not warranted. This criterion is met.*

- F. **1010 Signs;** 1010.07 Signs in Natural Resource Zones:

***Finding:** No commercial signs are proposed with this land use application; no commercial signs exist based upon the information provided by the applicant. A residential sign in the EFU district is subject to the standards of Subsection 1010.06(B).*

Only one residential sign is permitted, and only one residential sign currently exists. The existing sign is 18-inches by 19-inches in size, which is within the square footage limitation set forth in this subsection. The sign must be located behind the property line; and as demonstrated by the submitted site plan, the sign is located behind the property line. This criterion is met.

- G. **1015 Parking and Loading.** Section 1015 is designed to ensure that developments in Clackamas County provide sufficient and properly designed parking for motor vehicles. Outside the Urban Growth Boundary, areas used for

parking, loading, and maneuvering of vehicles shall be surfaced with screened gravel or better, and shall provide for suitable drainage.

Finding: *In Table 1015-1, the minimum number of parking spaces required for Canine Skills Training is one (1) per canine handler, based on the maximum number of handlers permitted for any single training session. An additional space shall be provided for each employee. Dog boarding kennels are not specifically listed in Table 1015-1. 1015.01(C) Parking requirements for uses not specifically listed in Table 1015-1 shall be subject to the requirements for the most similar use.*

The applicants propose to provide 11 parking spaces. Parking spaces identified on the site plan as #8 through 11 (located in front of the existing 1933-era building) will be delineated on site by wheel stops. Two of the 11 spaces are within an existing garage, and two of those spaces are in front of the garage. The hearings officer finds that this is suitable, because two of the on-site staff/dog trainers are the owners and residents of the subject property and it is reasonable to assume that they can park within the garage.

One parking space per canine handler is required, and each class size has approximately one to three dog handlers. At any given time, the two property owners, a trainer, and a technician will be on site in addition to the dog handlers.

The application narrative states that drop off and pick up times of dogs in their care will be scheduled in a way that will not cause an increase in number of vehicles on site at any given time. Therefore, the hearings officer finds that 11 parking spaces is adequate to support the proposed use.

- H. **1021 Solid Waste and Recyclable Material Collection.** Outlines the standards for refuse and recycling for commercial developments.

Finding: *A trash enclosure is not proposed. The applicants wheel individual containers to the roadway on garbage pick-up days, which is acceptable to the trash hauler. The applicants' waste management plan provided with the submittal materials suggests this is an acceptable way to handle any waste generated from the business. As applicable, this criterion is met.*

4. ZDO SECTION 1206 NONCONFORMING USES

Section 1206 is adopted to provide standards, criteria, and procedures under which a nonconforming use may be continued, maintained, verified, restored, replaced, and altered and under which a vested right may be determined. This portion of the application only applies to the existing building on the site. There is no assertion that the dog kennel or training uses are allowed as nonconforming uses.

- A. **1206.05 Verification.** The existence, continuity, nature, and extent of the nonconforming use for the ten- year period immediately preceding the date of the application is proven. Such evidence shall create a rebuttable presumption that the nonconforming use, as proven, lawfully existed at the time of, and has continued uninterrupted since, the adoption of restrictive zoning regulations, or a change in

the zoning or zoning regulations, that have the effect of prohibiting the nonconforming use under the current provisions of this Ordinance.

Finding: Restrictive zoning and setback requirements became effective in this area in September 1976. (Exhibit 20). Based on County records and aerial photos, the current indoor training facility and proposed kennel building existed on the site prior to that date. The building is referenced as a “machine shed” on the Clackamas County Assessment and Taxation records which indicate that the machine shed building was originally built on the property in 1933. Other tax records show the building existing as of 1953. The existing structure is visible on the site in an aerial photo of the site taken in August 1976, one month before the effective date of zoning. Therefore, the building pre-dates any zoning restrictions and/or building permit requirements.

Contrary to the neighbors’ assertion (Exhibit 16) the buildings on the site do not encroach onto neighboring properties. Based on the applicants’ survey, the buildings are located entirely on the site, albeit within current setbacks.

The machine shed was a 30-foot by 31-foot building. Based upon aerial photos made available by Google Earth, the machine shed was located on the property in June, 1994, and remained as-built until sometime between 2005 and 2010. Welkin Engineering surveyed the property and determined that the corner of this building is 5.3 feet from the rear (east) property line. Between August, 2005 and May, 2010 an addition was made to the building, as evidenced by the aerial photo from May, 2010. Additional discussion on this building alteration is discussed further, below.

After reviewing the County Assessment and Taxation records and aerial imagery, the hearings officer finds that adequate evidence to support the claim that the structure which will include a portion of the proposed dog kennel use has been located on the property since at least 1994 and has continued to exist on the property since then, although it is likely to have existed there since 1933. Further, based on the information provided by Welkin Engineering, the building has been located at a distance of 5.3 feet from the property line since 1994 and likely 1933. This criterion is met.

- B. 1206.07 Alteration.** Except as provided in Subsection 1206.07(C), an alteration of a nonconforming structure or other physical improvements, or a change in the use, requires review as a Type II application pursuant to Section 1307, Procedures, and shall be subject to the following standards and criteria:

1206.07(B)(1) The alteration or change will, after the imposition of conditions pursuant to subsection 1206.07(b)(4), have no greater adverse impact to the neighborhood than the existing structure, other physical improvements, or use.

Finding: This land use proposal involves both the request to alter the building size and the building use. Alterations to the building size is a retroactive request, and alterations to the building use is part of the current proposal to establish a conditional use permit for a dog kennel.

Alteration of the building size: As established by Welkin Engineering's survey of the subject property, the existing building that will be used in part for the dog kennel use is located 5.3 feet from the rear/eastern property line. Under current zoning regulations, a minimum ten-foot setback would be required for an accessory structure. As determined above, the building was built in 1933, prior to the establishment of minimum setback requirements (and zoning) and therefore has nonconforming setbacks. Based upon review of aerial photos from Google Earth, we can see that an addition was made onto the northern side of this building sometime between 2005 and 2010. Staff found no permits on file for this addition. While the addition itself met the ten-foot setback requirement, ZDO Section 1206 would have necessitated a land use permit for an alteration to a nonconforming use but staff found no evidence that a land use application was ever submitted for review. Therefore, the addition on the north side of this structure is being considered "retroactively" during this land use permit review.

Since the addition onto the structure is 12.6 feet from the rear property line, and the regulations necessitate at least a ten-foot setback (in effect from 2005 through to today), staff finds that there is no greater adverse impact to the neighborhood than the existing structure already posed.

Construction of the addition would also have required a building permit, unless the addition was subject to an exemption from building permit requirements an agricultural structure or other applicable exemption. There is no evidence that a building permit or exemption was obtained when the addition was constructed. Therefore, the applicants should be required to obtain a retroactive building permit or exemption for this addition. This is required by condition of approval 18 of this Final Order.

Alteration of the building use: The current proposal is to use a 750 square foot portion of the building for eight dog kennels; this portion of the building was constructed between 2005 and 2010 and conforms to the minimum ten-foot setback requirement. Since the portion of the building that will be used for a dog kennel meets the minimum setback requirement of the EFU zoning district, finds that there is no greater adverse impact to the neighborhood by changing the use of this portion of the building. Other impacts associated with dog kennels are discussed in response to the conditional use criteria earlier in this Final Order.

In summary, the hearings officer finds that the addition onto the existing structure and the proposal to use that addition for dog kennel use will cause no greater adverse impact to the neighborhood than the existing structure already did and therefore this criterion is met.

1206.07(B)(2) The nonconforming use status of the existing use, structure(s), and/or physical improvements is verified pursuant to Subsection 1206.05.

Finding: As described in detail above, staff finds that the nonconforming building setback is verified pursuant to Subsection 1206.05. This criterion is met.

1206.07(B)(3) The alteration or change will not expand the nonconforming use from one lot of record to another unless (a) The lot of record on which expansion is proposed and the lot of record on which the nonconforming use currently is established have been part of the same tract continuously since the date the nonconforming use became nonconforming; or (b) The expansion would allow only for facilities necessary to support the nonconforming use, such as driveways, storm water management facilities, and on-site wastewater treatment systems.

Finding: *The proposed alteration will not expand the nonconforming use from one lot of record to another. The proposal involves work on only the subject property: Lot 21 of the Canby-Needy Ranchettes subdivision. This criterion is met.*

1206.07(B)(4) Conditions of approval may be imposed on any alteration of a nonconforming structure or other physical improvements, or a change in the use, permitted under Subsection 1206.07(B), when deemed necessary to ensure the mitigation of any adverse impacts.

Finding: *This subsection is informational in nature. Conditions of approval are recommended at the beginning of this staff report; however, no conditions of approval are recommended that related directly to ZDO Section 1206.*

D. CONCLUSION

Based on the findings and discussion provided or incorporated herein, the hearings officer concludes that Case No. Z0054-24-C and Z0055-24-NCU (Huffman K9) should be approved, because the application does or can comply with applicable standards of the Clackamas County ZDO, provided it is subject to conditions that ensure timely compliance in fact with the ZDO and relevant Comprehensive Plan Policies.

E. DECISION

Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the hearings officer hereby approves Z0054-24-C and Z0055-24-NCU (Huffman K9) subject to the following conditions:

Conditions of Approval:

1. Approval of this land use permit is based on the submitted written narrative and plan(s) filed with the County on February 20, 2024, and additional materials received April 11 and April 14, 2024. No work shall occur under this permit other than which is specified within these documents, unless otherwise required or specified in the conditions below. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of any approval resulting from the decision described herein.
2. The conditional use approval is valid for four (4) years from the date of the final written decision (ZDO 1203.05). If the County's final decision is appealed, the

approval period shall commence on the date of the final appellate decision. During this four year period, the approval shall be implemented, or the approval will become void. “Implemented” means all major development permits shall be obtained and maintained for the approved conditional use, or if no major development permits are required to complete the development contemplated by the approved conditional use, “implemented” means all other necessary County development permits (e.g. grading permit, building permit for an accessory structure) shall be obtained and maintained. A “major development permit” is:

- a. A building permit for a new primary structure that was part of the conditional use approval, or
- b. A permit issued by the County Engineering Division for parking lot or road improvements required by the conditional use approval.

If the approval of a conditional use is not implemented within the initial approval period established by Subsection 1203.05(A), a two-year time extension may be approved pursuant to Section 1310, Time Extension. [Subsection 1203.05(B)]

3. If a conditional use is implemented pursuant to Subsection 1203.05 and later discontinued for a period of more than five consecutive years, the conditional use shall become void. [Subsection 1203.06]
4. The approval of an alteration of a nonconforming use, pursuant to Subsection 1206.07(B) or (C), is valid for a period of two years from the date of the final decision. If the County’s final decision is appealed, the approval period shall commence on the date of the final appellate decision. During this two-year period, the approval shall be implemented, or the approval will become void. “Implemented” means all major development permits shall be obtained and maintained for the approved conditional use, or if no major development permits are required to complete the development contemplated by the approved conditional use, “implemented” means all other necessary County development permits (e.g. grading permit, building permit for an accessory structure) shall be obtained and maintained, as described in Condition #2. [Subsection 1206.08]
5. Notwithstanding Subsection 1206.04(A), the allowed discontinuance period for a nonconforming use approved for an alteration pursuant to Subsection 1206.07(B) is extended to 24 consecutive months from the date of implementation of the alteration pursuant to Subsection 1206.08(A)(1). In no event shall the total period of discontinuance exceed 48 consecutive months (i.e., any discontinuance period preceding the filing of an application for an alteration, plus the period during which the alteration application is under review, plus the approval period allowed by Subsection 1206.08(A), plus the 24 consecutive months from the date of implementation. [Subsection 1206.08]
6. If the approval of an alteration of a nonconforming use is not implemented within the initial approval period established by Subsection 1206.08(A), a two-year time extension may be approved pursuant to Section 1310, Time Extension. [Subsection 1206.08]

7. Dog training classes, may be conducted outdoors or in preexisting farm buildings that existed on January 1, 2013, provided the number of dogs participating in training does not exceed ten dogs per training class; and, the number of training classes to be held on-site does not exceed six per day. If the dog training classes will exceed these limitations, then a Conditional Use permit must be obtained. [401.05(D)(6)]
8. Building materials for the façade of the proposed kennel building where the primary entrance is located shall be surfaced with brick, tile, masonry, stucco, stone or synthetic equivalent, pre-cast masonry, gypsum reinforced fiber concrete, wood lap siding, architecturally treated concrete, glass, wood, metal, or a combination of these materials. [1005.03(E)]
9. The applicant shall **insulate the kennel buildings to limit sound transmission outside the buildings.**
10. The applicant shall **confine all boarded dogs inside the kennel at night and use bark collars as necessary to control barking.**
11. **All frontage and onsite improvements shall be in compliance with *Clackamas County Roadway Standards*.**
12. The applicant shall obtain a Development Permit from Clackamas County Department of Transportation and Development prior to the initiation of any construction activities associated with the project.
13. The driveway approach onto S. Pelican Court is required to meet the standards of a gravel driveway, per Roadway Standards Drawing D400 “Standard Driveway Entry onto Unpaved County Roads”.
14. The applicant shall improve the existing driveway to provide a minimum 12-foot wide, gravel access road from the approach onto S Pelican Court to the parking area serving the kennel facility. The access road shall be consistent with Roadway Standards Drawing R100. Turnouts shall be constructed every 400 feet, per Standard Drawing C350.
15. An emergency vehicle turnaround shall be provided on-site, per Standard Drawing C350, as approved by the fire marshal.
16. The applicant shall provide adequate on site circulation areas for the parking and maneuvering of all vehicles anticipated to use the kennel facility. Parking spaces for the solar kennel shall meet *ZDO* section 1015 dimensional requirements, and Roadway Standards, Drawing P100/P200.
17. Prior to the issuance of a building permit or the initiation of any construction activities associated with the kennel facility, the applicant shall submit to Clackamas County Development Engineering:
 - a. Written approval from the local Fire District for the planned access, circulation, fire lanes. The approval shall be in the form of site stamped and signed by the Fire Marshal.

- b. A set of street and site improvement construction plans, in conformance with *Clackamas County Roadway Standards* Section 140, to Clackamas County's Engineering Office and obtain written approval, in the form of a Development Permit.
 - i. The permit will be for driveway, drainage, parking and maneuvering areas, and other site improvements.
 - ii. The minimum fee deposit is required upon submission of plans for the Development Permit. The fee will be calculated based on 8.83% of the public improvements and 5% of the onsite transportation improvements, according to the current fee schedule.
 - iii. The applicant shall have an Engineer, registered in the state of Oregon, design and stamp construction plans for all required improvements, or provide alternative plans acceptable to the Engineering Division.
- 18. **Prior to the operation of the dog kennel use**, the applicant shall work with the Clackamas County Building Codes division to obtain necessary permits for the building addition that occurred between 2005 and 2010, as described in this Final Order.
- 19. **Prior to the issuance of a building permit and/or site development**, the applicant shall submit to Clackamas County Engineering Office:
 - a. Written approval from the Fire District for the planned access, circulation, fire lanes and water source supply. The approval shall be in the form of site and utility plans stamped and signed by the Fire Marshal.
 - b. Written approval from the Clackamas County Engineering for surface water management facilities and erosion control measures.
 - c. A set of street and site improvement construction plans, in conformance with *Clackamas County Roadway Standards* Section 140, to Clackamas County's Engineering Office and obtain written approval, in the form of a Development Permit.

DATED this 15th day of July 2024.



Joe Turner, Esq., AICP
Clackamas County Land Use Hearings Officer

APPEAL RIGHTS

ZDO 1307.14(D)(6) provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer's decision constitutes the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such an appeal must be commenced. Presently, ORS 197.830(9) requires that any appeal to LUBA "shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final." This decision will be "final" for purposes of a LUBA appeal as of the date of mailing (which date appears on the last page herein).