

DOUGLAS COUNTY

DEPARTMENT OF HEARING EXAMINER

140 19th Street NW
East Wenatchee, WAS 98802-4109

BEFORE THE DOUGLAS COUNTY HEARING EXAMINER

IN THE MATTER OF:)	FINDINGS OF FACT,
APP -16-01)	CONCLUSIONS OF LAW
Wenatchee Kennel Club (LAR-16-05))	AND DECISION

1. This matter comes before the Hearing Examiner as an appeal of an administrative interpretation (DCC 2.13.070(3)). The Wenatchee Kennel Club (WKC) requested an administrative interpretation as to the classification of their use within the City of East Wenatchee zoning code as that code is applied to the unincorporated portion of the East Wenatchee Urban Growth Area. The appellants did not seek an interpretation as to any classification of their use within the non-urban zoning districts in unincorporated Douglas County.
2. Douglas County adopts the development regulations of each of the cities and towns in the county for application in the urban growth area within which the cities/towns are located. The structure of the City of East Wenatchee zoning code incorporates the 2002 North American Industry Classification System (NAICS). NAICS codes are used in Title 17 of the City of East Wenatchee Municipal Code to define which commercial uses are appropriate in the various commercial zoning districts within the city and the unincorporated urban growth area.
3. In its request for an administrative interpretation the WKC described the activities conducted at their current site and at other non-owned sites. The WKC also offered alternative classifications under the NAICS code, classifications asserted by the club that would allow them to locate in a Waterfront Mixed Use (WMU) zoning district.
4. The administrator determined, through research and consultation with the administrative authority for the City of East Wenatchee zoning code, that the dog training center as presented in documents submitted with the request is properly classified under the 2002 NAICS code system 812910 Pet Care (except Veterinary) Services.
5. The question before the Hearing Examiner is whether the administrator erred in reaching this conclusion. This review does not extend to whether the use is or isn't a compatible activity to allowed uses in the WMU district. That is a legislative function of the City of East Wenatchee City Council.
6. The North American Industry Classification System is, according to the US Census Bureau, "... the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy." It

has been created to allow for better statistical analyses by grouping together like businesses, services and uses.

7. Animal training services are grouped in NAICS code 812910 Pet Care (except Veterinary) Services. The Census Bureau describes this group: “This industry comprises establishments primarily engaged in providing pet care services (except veterinary), such as boarding, grooming, sitting, and training pets.” Moreover, the Census Bureau further describes animal training facilities.
8. The WMU district was developed and applied after a Growth Management Act planning process jointly conducted by the city and the county through a considerable and lengthy public process. This included a series of neighborhood meetings, hearings before the city and the county planning commissions, and more hearings by the city council and the county commissioners. This public process allowed all property owners an opportunity to guide the development in the area of their neighborhood, to gain some predictability as to the range of uses they could reasonably expect to develop near their property.
9. The structure of the East Wenatchee commercial zoning districts is exact. That is, by using NAICS codes, there is little subjective movement as to whether a particular use is or is not allowed. The City of East Wenatchee clearly intended this to be the case. A business owner/operator may view their business in one light, yet it is the exactness of the business’s classification by governmental agencies, especially the city specifically related to the use on the land, that is definitive.
10. WKC has offered alternative NAICS code classifications, specifically, NAICS 611620 and 611699. A review of descriptions of the US Census Bureau does not support the assertion that these use categories apply. NAICS 611620 Sports and Recreation Instruction is described as “This industry comprises establishments, such as camps and schools, primarily engaged in offering instruction in athletic activities to groups of individuals. Overnight and day sports instruction camps are included in this industry.” NAICS 611699 All Other Miscellaneous Schools and Instruction is described as “This U.S. industry comprises establishments primarily engaged in offering instruction (except business, computer, management, technical, trade, fine arts, athletic, language instruction, tutoring, and automobile driving instruction). Also excluded from this industry are academic schools, colleges, and universities.” The example uses listed under NAICS 611620 and 611699 do not include “obedience training services” or “pet training services” as found in NAICS 812910. As presented by the applicants, both of these services are essential functions of the club.
11. An open record public hearing after due legal notice was held on July 21, 2016. Admitted into the record was the entire planning staff file of record, including the following materials:
 - 11.1 Notice of Appeal filed by Pam Jenkins, representative of the Wenatchee Kennel Club. Attachment pages 1-44.
 - 11.2 Administrative interpretation (LAR-16-05) from Mark Kulaas, Douglas County Land Services Director, to John Njus, Wenatchee Kennel Club. Attachment pages 45-71.
 - 11.3 April 18, 2016 and April 14, 2016 correspondence between Lori Barnett, City of East Wenatchee Community Development Director, and Mark Kulaas, Douglas County Land Services Director. Attachment pages 72-74.

- 11.4 April 20, 2016 correspondence from Douglas County Transportation & Land Services to John Njus, Wenatchee Kennel Club. Attachment pages 75-76.
- 11.5 June 8, 2016 photograph of the Wenatchee Kennel Club Dog Training Center sign posted on the club's facility. Attachment page 77.
- 11.6 Print out of Washington State Department of Revenue records database for Wenatchee Kennel Club that includes the club's NAICS classification. Attachment page 78.
- 11.7 Print out of Washington State Department of Revenue records database for other kennel clubs that includes those club's NAICS classification. Attachment pages 79-84.
- 11.8 Listing of kennel clubs in the state that are in the database of the National Center for Charitable Statistics. Attachment page 85.
12. Also admitted into the record were the following exhibits:
 - 12.1 Exhibit 1: July 21, 2016 materials submitted by Pam Jenkins with attachments.
 - 12.2 Exhibit 2: July 21, 2016 letter from Lynda Pheasant to the Hearing Examiner.
13. Testifying on behalf of the applicant were the following individuals:
 - 13.1 Pam Jenkins: Ms. Jenkins testified consistent with Exhibit 1.
 - 13.2 Lynda Pheasant: Ms. Pheasant testified consistent with Exhibit 2.
 - 13.3 Louise Day: Ms. Day testified that she is President of the Wenatchee Kennel Club and Chairman of the Board. Ms. Day testified that there are no sporting competitions that are held on-site. The spectator dog sports are so large in attendance that they must be held off-site, even taking into account the new, proposed building they wish to construct. She stated that the on-site activities are a training facility.
14. In comments, Ms. Lori Barnett, Director of Community Development, agreed with the Douglas County determination that the proposed use is most appropriately categorized in the NAICS system as 812910 Pet Care.
15. The Hearing Examiner finds that in a zoning context, the NAICS classification that most closely correlates with the use on the property, is the NAICS 812910.
16. The appellant's representatives, Ms. Jenkins and Ms. Pheasant, argued that it is the income generated by the use that controls the NAICS classification. However, in a zoning context, this is neither conclusive nor determinative.
17. Ms. Day, President and Chairman of the Board of the Wenatchee Kennel Club, testified that the sporting competitions, relied upon by the appellant to determine the correct NAICS classification, all occur off-site. This is because of the size of these sporting competitions. Although the Wenatchee Kennel Club derives substantial income from these off-site sporting competitions, the Hearing Examiner finds that this is not conclusive in determining the NAICS use classification. It is the use taking place on the particular site that, in this circumstance, is determinative.

18. Ms. Day testified that the site is used not for dog sport competitions, but for dog training activities.
19. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

CONCLUSIONS OF LAW

1. The Hearing Examiner has the inherent authority to render this decision.
2. Title 17 of the East Wenatchee Municipal Code provides that NAICS codes are used to determine which commercial uses are appropriate in various zoning districts within the city and the unincorporated urban growth area.
3. NAICS code 812910 would apply to a dog training facility as described by the appellant.
4. The City of East Wenatchee Director of Community Development has been granted authority to administer the city's zoning code pursuant to EWMC 17.84.010. This includes the authority to determine where the use fits within its application of the NAICS system.
5. The administrative interpretation of the Douglas County Director of Land Services is legally correct in all respects.
6. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

DECISION

Based upon the above Findings of Fact and Conclusions of Law, the administrative interpretation of the Douglas County Director of Land Services, dated June 8, 2016, is hereby **AFFIRMED** in its entirety.

DATED this 3rd day of August, 2016.

DOUGLAS COUNTY HEARING EXAMINER



Andrew L. Kottkamp