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MEMORANDUM

TO: Douglas County Hearing Examiner

FROM: Transportation & Land Services Staff

DATE: July 8, 2016

SUBJECT: APP-16-01 Wenatchee Kennel Club (LAR-16-05)

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.

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.

In its request for an administrative interpretation the WKC described the activities conducted at their current site. 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, which appears to be the overriding goal of the WKC. 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 classified under the 2002 NAICS code system 812910 Pet Care (except Veterinary) Services.

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.

The appellants also present argument regarding whether the activity constitutes a "kennel." That is not at issue in this matter as this, again, is limited to an administrative interpretation related to the City of East Wenatchee zoning code. The status of the WKC as a "kennel" was not a consideration.

The appellants are also introducing additional information, including a metamorphosing description of WKC activities and yet more alternative NAICS codes, in an effort to be allowed into the WMU district through this appeal. This is not the appropriate process for gaining approval of site location for a dog training center.

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. To seek zoning approval through an appeal subverts the involvement of the many people devoted many hours to meetings and would undermine the public's confidence in the integrity of the public process.

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 use is or is not allowed. It must be assumed that the City of East Wenatchee 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, that is definitive.

A portion of the department's research to verify its conclusions included a review of records for similarly named businesses registered with the state Department of Revenue. There are seven registered businesses that have the term "kennel club" in their title. Three of these, including the WKC, have a NAICS classification of 812910 Pet Care (except Veterinary) Services. One is classified as 115210 Support Activities for Animal production (not allowed in the WMU district); one is 453998 All Other Miscellaneous Store Retailers (except Tobacco Stores) (not allowed in the WMU district), one is 561920 Convention and Trade Show Organizers (allowed in the WMU district) and one is 999990 (unclassified). There are six other "kennel clubs" in the state that are identified by the National Center for Charitable Statistics. These have also been designated with a NAICS code of 999990. Businesses classified as 999990 are not permitted in the WMU. None of the NAICS codes suggested by the WKC have been

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assigned to the other kennel clubs in the state, yet all have a similar function: dog training.

If the WKC is adamant about locating in the WMU as opposed to finding property in one of the many other zoning districts that would accommodate it, the most appropriate approach would be for the WKC to petition the City of East Wenatchee to consider an amendment to its zoning code. If accepted by the city, a public process would ensue, which would offer fair opportunity for interested citizens to participate. Notice of appeals and related hearings are limited to legal advertising and notice to the parties, much less than that for a typical planning process.

The City of East Wenatchee is the authority, ultimately, to determine where a use fits within its application of the NAICS system. The city has done so in this matter. This is documented in April 18, 2016 correspondence from the city's Director of Community Development, the person granted authority to administer the city's zoning code by EWMC 17.84.010.

Materials included in this report from the records for LAR-16-05 and APP-16-01 include:

1. Notice of Appeal filed by Pam Jenkins, representative of the Wenatchee Kennel Club. Attachment pages 1-44.
2. Administrative interpretation (LAR-16-05) from Mark Kulaas, Douglas County Land Services Director, to John Njus, Wenatchee Kennel Club. Attachment pages 45-71.
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.
4. April 20, 2016 correspondence from Douglas County Transportation & Land Services to John Njus, Wenatchee Kennel Club. Attachment pages 75-76.
5. June 8, 2016 photograph of the Wenatchee Kennel Club Dog Training Center sign posted on the club's facility. Attachment page 77.
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.
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.
8. Listing of kennel clubs in the state that are in the database of the National Center for Charitable Statistics. Attachment page 85.

These materials document what was presented to the department, the consideration given and the research conducted. The materials support the conclusion that the interpretation of the administrator was not erroneous and it should be upheld.