

THE FOLLOWING MEMO HAS BEEN SCANNED
WITHOUT EXHIBITS FOR THE HEARING TO
BE CONDUCTED BY THE BENTON COUNTY
BOARD OF ADJUSTMENT
ON
THURSDAY
APRIL 4, 2013 - 7 P.M.

**PLANNING ANNEX
BENTON COUNTY PLN. DEPARTMENT
1002 DUDLEY AVENUE
PROSSER, WA 99350**

IF YOU WISH TO OBTAIN A COMPLETE
PACKET INCLUDING THE EXHIBITS PLEASE
CONTACT THE BENTON COUNTY PLANNING
DEPARTMENT BY CALLING 736-3086 FROM
TRI-CITIES OR 786-5612 FROM PROSSER OR
EMAIL TO
PLANNING.DEPARTMENT@CO.BENTON.WA.US

**EXHIBIT LIST FOR CUP 13-05
ED MCCLELLAN/KAYE SCANTLIN - APPLICANTS**

BOARD OF ADJUSTMENT STAFF MEMO EXHIBIT LISTING – APRIL 4, 2013			
BOAM 1 INCLUDES	EXHIBIT #	DOCUMENT NAME	DATE
	BOAM 1.1	Staff Memo	March 22, 2013
	BOAM 1.2	Notice of Open Record Hearing	March 12, 2013
	BOAM 1.3	Benton PUD Comments	March 13, 2013
	BOAM 1.4	Benton County Fire Marshall Comments	March 14, 2013
	BOAM 1.5	Benton Co. Bld Dept. Comments	March 14, 2013
	BOAM 1.6	Benton Co. Public Works Comments	March 18, 2013
	BOAM 1.7	Department of Ecology Comments	March 19, 2013
	BOAM 1.8	Benton Franklin Health Dist. Comments	March 25, 2013
	BOAM 1.9	Vicinity Map	
	BOAM 1.10	Aerial of the site	
	BOAM 1.11	Letter from Kathleen McNabb	March 25, 2013
BOARD OF ADJUSTMENT – APPLICATION EXHIBIT LISTING – APRIL 4, 2013			
BOAR 1 INCLUDES	EXHIBIT #	DOCUMENT NAME	DATE
	BOAR 1.1	Conditional Use Application	March 12, 2013
	BOAR 1.2	Plot Plant	
	BOAR 1.3	Photo of shop – kennel area turnout	March 19, 2013
	BOAR 1.4	Photo of shop –projected future kennel	March 19, 2013
	BOAR 1.5	Photo of property – yard kennel area	March 19, 2012
	BOAR 1.6	Proposed Signage	
	BOAR 1.7	Google map of site	March 24, 2013
	BOAR 1.8	Additional information on proposal	
BOARD OF ADJUSTMENT EXHIBIT HEARING – APRIL 4, 2013			
BOAH 1 INCLUDES	EXHIBIT #	DOCUMENT NAME	DATE
	BOAH 1.1		
	BOAH 1.2		
	BOAH 1.3		
	BOAH 1.4		

EXHIBIT SHEET – E-1 – Exhibit listing
 BOAR – Board of Adjustment Record Exhibits
 BOAM – Board of Adjustment Memo Exhibits
 BOAH 1 - Documents submitted during the hearing

Benton County Planning Department

Planning Annex, P.O. Box 910, 1002 Dudley Avenue, Prosser WA 99350, Phone: (509) 786-5612 or (509) 736-3086, Fax (509) 786-5629

MEMO DATE: MARCH 22, 2013

MEETING DATE: APRIL 7, 2013

TO: BENTON COUNTY BOARD OF ADJUSTMENT

FROM: CLARK A. POSEY, SENIOR PLANNER 
BENTON COUNTY PLANNING DEPARTMENT

RE: CONDITIONAL USE PERMIT APPLICATION – CUP 13-05

APPLICANTS: ED McCLELLAN & KAYE SCANTLIN
2917 W. 19th Ave # 110
KENNEWICK, WA 99337

ED McCLELLAN & KAYE SCANTLIN
118 N. YELM
KENNEWICK, WA 99336

PROPERTY OWNERS: ROLAND & TRINA DANIEL
1556 N. DALLAS RD
BENTON CITY, WA 99320

SPECIFIC REQUEST: The applicants, Ed McClellan and Kaye Scantlin are requesting a conditional use permit for the operation of a commercial kennel for overnight boarding, breeding, retail, and for personal pets up to 40 dogs and a few cats. The property is owned by Roland & Trina Daniel 1556 N. Dallas Rd. Benton City, WA 99320.

BACKGROUND:

Site Location: The site is located on a developed site at 1556 N. Dallas Road. Benton City, WA 99320 in Section 31, Township 9 North, Range 28 East, W.M.

Land Use: The site is currently developed with a single-family dwelling and outbuildings. The surrounding properties are developed with like uses and pasture acreage.

Zoning: The site and surrounding properties are zoned Rural Lands 5.

Comprehensive Plan Designation: "Rural Lands 5".

State Environmental Policy Act: Categorically exempt from the requirements of the Washington State Environmental Policy Act, under WAC 197-11-800(13).

APPLICABLE DEVELOPMENT REGULATIONS

The Benton County Code Section 11.16A.050 (f) (In the Rural Lands 5 Zoning District) states that: "A Commercial Kennel may be allowed on a single parcel of record by conditional use permit issued by the Benton County Board of Adjustment after notice and public hearing as provided in BCC 11.52.090."

Benton County Code Section 11.52.090(a) states:

"Conditional Use/Special Permits and General Standards" The conditional use/special permit application process allows the Board of Adjustment to review the location and design of certain proposed uses, the configuration of improvements, and the potential impacts on the surrounding area. The application process also allows the Board of Adjustment to ensure development in each zoning district protects the integrity of that district. The notice, hearing, decision and enforcement procedures are as set forth herein and in Section 2.

Certain uses are classified as conditional uses/special uses because of their unusual nature, infrequent occurrence, special requirements, or potentially significant impacts to the environment, public infrastructure or adjacent properties, and/or possible safety hazards and other similar reasons.

Once granted a conditional use/special permit may be transferred by a holder thereof after written notice to the Board of Adjustment; provided the use and location must remain the same and the transferee must continue to comply with the conditions of the permit and, if applicable, the requirements set forth in BCC 11.52.070.

Benton County Code Section 11.52.090(d) states:

"Conditional Use/Special Permit—Permit Granted or Denied. A conditional use/special permit shall be granted only if the Board of Adjustment can make findings of fact based on the evidence presented sufficient to allow the Board of Adjustment to conclude that, as conditioned, the proposed use:

- (1) is compatible with other uses in the surrounding area or is no more incompatible than are any other outright permitted uses in the applicable zoning district;
- (2) will not materially endanger the health, safety, and welfare of the surrounding community to an extent greater than that associated with any other permitted uses in the applicable zoning district;
- (3) would not cause the pedestrian and vehicular traffic associated with the use to conflict with existing and anticipated traffic in the neighborhood to an extent greater than that associated with any other permitted uses in the applicable zoning district;

- (4) will be supported by adequate service facilities and would not adversely affect public services to the surrounding area;
- (5) would not hinder or discourage the development of permitted uses on neighboring properties in the applicable zoning district as a result of the location, size or height of the buildings, structures, walls, or required fences or screening vegetation to a greater extent than other permitted uses in the applicable zoning district; and

If reasonable conditions cannot be imposed so as to allow the Board of Adjustment to make the conclusions required above, the conditional use/special permit application shall be denied.”

FINDINGS OF FACT

Based on the application and information received the planning staff makes the following findings.

1. The applicants are Ed McClellan and Kaye Scantlin. 180 N. Elm Kennewick, WA 99336 and 2917 W. 19th Ave # 110. 99337 The property owners are Roland & Trina Daniel. 1556 N. Dallas RD Benton City, WA 99320
2. The applicants are requesting approval of a Conditional Use Permit for the operation of a commercial kennel for up to 40 adult dogs six months of age or older on a 2-acre parcel of land with a few cats. To operate a dog kennel with overnight boarding, breeding, retail, and keeping of personal pets. The hours of operation requested by the applicants would be by appointment only.
3. Conditional Use Permit CUP 13-05 was submitted to the Benton County Building Department on February 28, 2013, received by planning on March 5, 2013 and declared complete on March 12, 2013.
4. The notice for the Benton County Board of Adjustment Open Record Hearing was published on March 18, 2013 in the Tri-City Herald and mailed to property owners of record within 300 feet of the outer boundaries of the parcel. The Open Record Hearing is scheduled for April 4, 2013.
5. Conditional Use Permit CUP 13-05 is categorically exempt from the requirements of the Washington State Environmental Policy Act, under WAC 197-11-800(13).
6. The site is currently developed with a single-family dwelling and outbuildings. The surrounding properties are developed with both residential and agricultural uses and pasture acreage for animals.
7. The site and surrounding properties are zoned Rural Lands 5.
8. The Benton County Comprehensive Plan designated the site and surrounding areas as “Rural Lands 5”.

9. The Benton County Department of Public Works stated the following: "There is an existing paved access approach onto Dallas Road. Because of this, no other requirement will be necessary for the approach."
10. The Benton-Franklin Health District stated the following: (1) The site is served by an approved public water supply in accordance with WAC 246-291. (2) The new office is served by an on-site sewage disposal system that is permitted and installed and approved in accordance with Benton –Franklin District Board of Health Rules and Regulations No. 2. (3) All animal waste is managed in accordance with applicable rules.
11. The Washington State Department of Ecology has commented that on-site disposal of commercial wastes and wastewaters are illegal unless specifically approved by the Department of Ecology. This does include wastewaters sent to septic systems.
12. Typically, the Board of Adjustment has approved conditional use permit applications for dog kennels when the animals are housed in indoor kennels to minimize noise and with proper ventilation. For sanitary purposes, the housing of dogs inside of residences is not permissible.
13. The applicants did not address in their application how waste from the animals would be handled. Any waste must be disposed of in accordance with state and local laws.
14. The applicant has requested that one sign be allowed on the property.
15. There will be no non-resident employees used for this operation.
16. The maximum square footage of an accessory building for a conditional use permit in the Rural Lands 5 Zoning District is 1800 sq. ft. No additional buildings or additions to existing buildings will be allowed to exceed the maximum of 1800 sq. ft. total.
17. The proposed use would not materially endanger the health, safety, and welfare of the surrounding community to an extent greater than that associated with any other permitted uses in the Rural Lands 5 Zoning District such as schools, churches, libraries, community club houses, stills, packaging sheds and five borders and/or lodgers in any one family dwelling unit.
18. The proposed use as shown in the application would not cause the pedestrian and vehicular traffic associated with the use to conflict with existing and anticipated traffic in the neighborhood to an extent greater than that associated with any other permitted uses in the Rural Lands 5 Zoning District such as schools, churches, libraries, community club houses, stills, packaging sheds and five borders and/or lodgers in any one family dwelling unit.
19. The proposed use as shown in the application would be supported by adequate service facilities, if the conditions as requested by the Planning Staff were required. The proposed use would not adversely affect public services to the surrounding area. There is no evidence to support that the site would not be adversely affected. The residence on site is served by all the necessary services.

20. Applicant shows a "Kennel Area Turnout" to be on the north and west sides of the existing accessory building. There is a distance of twenty-five (25) feet between the building and the property line on the west, the closest house to the west is sixty-five feet from the property line. Because of the closeness to the property line the Planning Department would recommend that this turnout area on the west side be eliminated and only allow turnout areas on the east and the north side of this existing building. Unless a sound barrier can be erected the neighbors would only be 65 feet away from barking dogs and an anticipated problem could be expected.
- 21: Benton PUD had no comments on this conditional use permit.
22. The Benton County Building Department commented that a building permit would be required.
23. The Benton County Fire Marshall commented that the applicants must comply with the Benton County Codes.

DISPOSITION OF THE APPLICANT'S REQUEST

A conditional use/special permit shall be granted only if the Board of Adjustment can make findings of fact based on the evidence presented sufficient to allow the Board of Adjustment to conclude that, as conditioned, the proposed use:

- (1) is compatible with other uses in the surrounding area or is no more incompatible than are any other outright permitted uses in the applicable zoning district;**
- (2) will not materially endanger the health, safety, and welfare of the surrounding community to an extent greater than that associated with any other permitted uses in the applicable zoning district;**
- (3) would not cause the pedestrian and vehicular traffic associated with the use to conflict with existing and anticipated traffic in the neighborhood to an extent greater than that associated with any other permitted uses in the applicable zoning district;**
- (4) will be supported by adequate service facilities and would not adversely affect public services to the surrounding area;**
- (5) would not hinder or discourage the development of permitted uses on neighboring properties in the applicable zoning district as a result of the location, size or height of the buildings, structures, walls, or required fences or screening vegetation to a greater extent than other permitted uses in the applicable zoning district; and**

CONDITIONS OF APPROVAL

If the Board of Adjustment decides to approve Conditional Use Permit Application 13-05, based on the information presented at the public hearing and after making such findings that support that decision, the Planning Department recommends that the following conditions be included:

1. Applicants shall not conduct any of the activities within the scope of Conditional Use Permit 13-05 until the applicants are in compliance with all the conditions set forth herein. The applicants shall notify the Benton County Planning Department in writing when the conditions set forth herein have been completed. The Planning Department shall not issue the conditional use permit until those conditions have been met. The conditional use permit shall not become effective until issued by the Planning Department.
2. If the conditions of approval have not been met and the Planning Department does not issue the conditional use permit within one (1) year from the time the Board of Adjustment conditionally approved the conditional use permit, the Board of Adjustment may declare its approval null and void at a regular Board of Adjustment meeting. Prior to doing so, the applicants shall be notified in writing at the applicant's last known address at least twelve (12) days in advance of the upcoming Board of Adjustment meeting.
3. That the applicants continue to meet the requirements sent from the Benton-Franklin Health District to the Benton County Planning Department as outlined in the March 25, 2013, letter. The applicants are to provide the Planning Department written verification that all of the Health District's requirements have been met. The applicants shall continue to meet all such requirements while Conditional Use Permit CUP 13-05 is in effect.
4. The requested conditional use permit shall be limited to 40 dogs (6 months and older) on the site. The applicants shall continue to meet all such requirements while Conditional Use Permit CUP 13-05 is in effect.
5. That the dogs be kept in a kennel that is indoors with insulated walls and ceiling and sheetrock interior and concrete flooring for sanitation to minimize noise and to keep proper ventilation, i.e. heated in the winter and air conditioned in the summer. The housing of dogs inside a residence is not permissible due to sanitary conditions. The applicants shall continue to meet all such requirements while Conditional Use Permit CUP 13-05 is in effect.
6. That the property owner and the proprietor(s) of the business shall comply with all requirements of the Benton County Building Department, the Benton County Fire Marshal, the Benton-Franklin Health Department, and all other local, state and federal regulations pertinent to the special permit pursued. The requirements of or permission granted by the Board of Adjustment shall not be construed as an exemption from such regulations. The applicants shall continue to meet all such requirements while Conditional Use Permit CUP 13-05 is in effect.
7. A fence must be constructed around the kennels that will house the dogs. Height of fencing shall be a minimum of six (6) feet tall and shall be maintained in good repair for segregation and separation of the dogs. The applicants shall continue to meet all such requirements while Conditional Use Permit CUP 13-05 is in effect.

8. That any waste created as a result of the conditional use permit must be disposed of in compliance with all local, state and/or federal regulations. In this application a system must be installed on site to adequately collect and treat all of the waste generated by the animals contained on the property. The applicants shall continue to meet all such requirements while Conditional Use Permit CUP 13-05 is in effect.
9. The hours of operation were requested by the applicant for "seven (7) days a week by appointment only". If approved, the Planning Department would suggest that no customers/clients be allowed on site before the hour of 7:00 a.m. or after 10:00 p.m. on any day.
10. There will be no non-resident employees used for this operation.
11. The maximum square footage of an accessory building for a conditional use permit in the Rural Lands 5 Zoning District is 1800 sq. ft. No additional buildings or additions to existing buildings will be allowed to exceed 1800 sq. ft. total.
12. Only one sign will be used to identify the property as a kennel. The applicants shall continue to meet all such requirements while Conditional Use Permit CUP 13-05 is in effect.
13. **RCW (Revised Code of Washington) 16.52.310** on dog breeding, limit number of dogs, required conditions, penalty limitation of section-definitions, make up Condition No.13 and are listed as follows
 - (1) A person may not own, possess, control, or otherwise have charge or custody of more than fifty dogs with intact sexual organs over the age of six months at any time.
 - (2) Any person who owns, possesses, controls, or otherwise has charge or custody of more than ten dogs with intact sexual organs over the age of six months and keeps the dogs in an enclosure for the majority of the day must at a minimum:
 - (a) Provide space to allow each dog to turn about freely, to stand, sit, and lie down. The dog must be able to lie down while fully extended without the dog's head, tail, legs, face, or feet touching any side of an enclosure and without touching any other dog in the enclosure when all dogs are lying down simultaneously. The interior height of the enclosure must be at least six inches higher than the head of the tallest dog in the enclosure when it is in a normal standing position. Each enclosure must be at least three times the length and width of the longest dog in the enclosure, from tip of nose to base of tail and shoulder blade to shoulder blade.
 - (b) Provide each dog that is over the age of four months with a minimum of one exercise period during each day for a total of not less than one hour of exercise during such day. Such exercise must include either leash walking or giving the dog access to an enclosure at least four times the size of the minimum allowable enclosure specified in (a) of this subsection allowing the dog free mobility for the entire exercise period, but may not include use of a cat mill, jenny mill, slat mill, or similar device, unless prescribed by a doctor of veterinary medicine. The exercise requirements in this subsection do not apply

to a dog certified by a doctor of veterinary medicine as being medically precluded from exercise.

(c) Maintain adequate housing facilities and primary enclosures that meet the following requirements at a minimum:

- (i) Housing facilities and primary enclosures must be kept in a sanitary condition. Housing facilities where dogs are kept must be sufficiently ventilated at all times to minimize odors, drafts, ammonia levels, and to prevent moisture condensation. Housing facilities must have a means of fire suppression, such as functioning fire extinguishers, on the premises and must have sufficient lighting to allow for observation of the dogs at any time of day or night;
- (ii) Housing facilities must enable all dogs to remain dry and clean; housing facilities must provide shelter and protection from extreme temperatures and weather conditions that may be uncomfortable or hazardous to the dogs;
- (iii) Housing facilities must provide sufficient shade to shelter all the dogs housed in the primary enclosure at one time;
- (iv) A primary enclosure must have floors that are constructed in a manner that protects the dogs' feet and legs from injury;
- (v) Primary enclosures must be placed no higher than forty-two inches above the floor and may not be placed over or stacked on top of another cage or primary enclosure;
- (vi) Feces, hair, dirt, debris, and food waste must be removed from primary enclosures at least daily or more often if necessary to prevent accumulation and to reduce disease hazards, insects, pests, and odors; and
- (vii) All dogs in the same enclosure at the same time must be compatible, as determined by observation. Animals with a vicious or aggressive disposition must never be placed in an enclosure with another animal, except for breeding purposes. Breeding females in heat may not be in the same enclosure at the same time with sexually mature males, except for breeding purposes. Breeding females and their litters may not be in the same enclosure at the same time with other adult dogs. Puppies under twelve weeks may not be in the same enclosure at the same time with other adult dogs, other than the dam or foster dam unless under immediate supervision.

(d) Provide dogs with easy and convenient access to adequate amounts of clean food and water. Food and water receptacles must be regularly cleaned and sanitized. All enclosures must contain potable water that is not frozen, is substantially free from debris, and is readily accessible to all dogs in the enclosure at all times.

(e) Provide veterinary care without delay when necessary. A dog may not be bred if a veterinarian determines that the animal is unfit for breeding purposes. Only dogs between the ages of twelve months and eight years of age may be used for breeding. Animals requiring euthanasia must be euthanized only by a licensed veterinarian.

(f) A person who violates RCW 16.52.310, subsections (1) or (2) of this section is guilty of a gross misdemeanor. The applicants shall continue to meet all such requirements while Conditional Use Permit CUP 13-05 is in effect.