

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant: JoAnn Gustafson
7265 F&S Grade Road
Sedro Wooley, WA 98284

File No: PL08-0418

Request: Special Use Permit

Location: 7265 F&S Grade Road, SP118-77, Tract 6 of Valley View
Estates Division #1, within a portion of the SW1/4 of Sec. 9,
T35N, R4E, W.M.

Parcel No: P36035

Land Use Designation: Rural Reserve (RRv)

Summary of Proposal: To operate a kennel for the breeding and showing of Shih
Tzu dogs.

Public Hearing: After reviewing the report of Planning and Development Services,
the Hearing Examiner conducted a public hearing on October 14,
2009.

Decision: The application is approved, subject to conditions.

FINDINGS OF FACT

1. JoAnne Gustafson seeks a Special Use Permit to operate a kennel for the breeding and showing of Shih Tzu dogs. This is an unpermitted kennel that existed prior to the adoption of the current kennel regulations. It is being processed as allowed in Ordinance #020080004.
2. The facility is located at the applicant's home at 725 F&S Grade Road. The property is Parcel number P36035, described as SP118-77 Tract 6 of Valley View Estates Division #1, within a portion of the SW1/4 Sec. 9, T35N, R4E, W.M.
3. The property is zoned Rural Reserve (RRv). It is approximately five (5) acres in size and is basically rectangular in shape. The property measures about 330 feet along the south (F&S Grade Road), 1000 feet along the west, 140 feet along the north and 1070 feet along the east property lines. It is basically flat.
4. Adjacent to the north, east and west are large heavily forested lots developed with single family homes. To the immediate south is another wooded lot owned by the applicant and south of that is the Butler Pit, an active gravel pit. The property is within 500 feet of designated natural resource land.
5. The property has an existing residence, a carport/hobby/storage building and a garage/shop/storage building. These structures are shielded from the road and the neighboring properties by a dense growth of trees. The residence which is the closest building to the road is set back approximately 350 feet from the property line. The property is served by an on-site septic system and a community water system.
6. The dogs live in the residence or in the kennel, which is located in the 700 square foot hobby building west of the residence. There are five indoor/outdoor dog runs with on-demand drinking water containers outside. The inside runs have a vinyl floor. The outside portions are concrete. In addition there is a 40' by 20' fenced dog yard paved with patio blocks. The kennel is located in an area where drainage from the pads and slabs and runway washdown water will be absorbed on the applicant's property and will not affect surface or ground water.
7. The applicant's facility is a hobby, involving the raising of Shih Tzus for showing. After their show careers some of the dogs are used for breeding. Some of the puppies may be given away or sold. The usual dog population on site is 10 to 12 dogs, although this number fluctuates. There are never more than 25. In the past the applicant has also accepted rescue dogs (abandoned or mistreated dogs in need of a home). The dogs on-site all belong to the applicant and are treated as pets. No "outside" dogs are boarded on the property.
8. The applicant does most of the work of caring for the dogs herself with some help from her daughter. There are no employees. There are no customers. The site is not open to the public.

9. Shih Tzus that are being shown are in full coat with hair hanging to the ground. Once a dog has finished its championship run, the long hair is cut off and he or she is looked at for breeding purposes. The show dogs are kept separate from the "cutdown" dogs. Grooming is done in the kennel building and bathing occurs there on a regular basis. Care is taken in breeding to avoid passing on defective genes and to improve the structure and health of new generations.

10. The dogs are de-barked to avoid disturbing neighbors. They are kept inside at night. Blankets are placed in each sleeping area and are changed about three times a week, depending on how much dirt the dogs bring in.

11. The kennel waste is picked up daily and disposed of by double bagging and putting it in garbage containers. The runs and play areas are washed down with water and Clorox when needed.

12. Because of the thick vegetation on the site, no additional landscaping is needed to shield the kennel operation from outside view.

13. The dogs have ample area to run and play for daily exercise.

14. If an emergency were to require evacuation of the kennel, the applicant states that the dogs could be moved into the residence. In case of a need to leave the property, the dogs could be transported out by van.

15. The county adopted comprehensive regulations governing kennels in 2008. Permits are now required for most kennels. However, under the adopting Ordinance, kennels that existed prior to July 2, 2007 are exempt from requirements for minimum acreage, minimum setbacks, and fencing between kennels and property lines. The subject operation is such a pre-existing kennel.

16. Notice of the instant application, mailing and posting were carried out as required by law. There were not public comments prior to hearing. A Mitigated Determination of Non-Significance (MDNS) was issued on July 28, 2009, under the State Environmental Policy Act (SEPA). The appeal period ended on August 28, 2009. There were no appeals.

17. The following conditions were placed in the MDNS:

- Solid waste shall be at a minimum double bagged and placed in metal receptacles on premises to be disposed of on a weekly schedule, either picked up by Waste Management, Inc., another solid waste handler or taken to a solid waste transfer station.
- The bagged waste shall weigh no more than 10 pounds each.

- The receptacle(s) shall be covered and insect and rodent proofed.
- As an alternative, an approved agriculture waste plan or an approved onsite septic system used exclusively for the containment of the animal waste may be used. The septic system must be monitored and maintained at a maximum of every six (6) months.
- The applicant shall comply with SCC 14.16.840 Performance Standards.

18. The application was routed to various County departments for review. Their comments are reflected in conditions of approval. Because no new structures, improvements or land clearing were proposed no critical areas review was required.

19. SCC 14.16.900(2)(i) contains specific criteria for kennels being reviewed for Special Use Permits. The subject operation is exempt from the first two paragraphs of this subsection. The applicable requirements include rules on parking, lighting, waste disposal, prevention of escapement, night-time containment, emergency evacuation, and exercise. By reference the provisions of Chapter 7.02 SCC must also be met. The latter chapter sets forth both environmental and operational requirements, to insure humane treatment of animals as well as human health. Under the facts found above, the Examiner determines that the subject facility and operation, as conditioned below, meets all of these criteria and requirements.

20. In addition, the application must be consistent with the general criteria for Special Use Permit issuance. These are set forth in SCC 14.16.900(1)(b)(v), as follows:

- A. The proposed use will be compatible with existing and planned land use and comply with the Comprehensive Plan.
- B. The proposed use complies with the Skagit County Code.
- C. The proposed use will not create undue noise, odor, heat, vibration, air and water pollution impacts on surrounding, existing, or potential dwelling units, based on the performance standards of SCC 14.15.840.
- D. The proposed use will not generate intrusions on privacy of surrounding uses.
- E. Potential effects regarding the general public health, safety, and general welfare.
- F. For special uses in . . . [natural resource lands], the impacts on long-term natural resource management and production will be minimized.

G. The proposed use is not in conflict with the health and safety of the community.

H. The proposed use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding areas, or conditions can be established to mitigate adverse impacts on such facilities.

21. The Staff Report analyzes the application in light of the above criteria and finds that, as conditioned, the operation will be consistent with them. The Hearing Examiner concurs with this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

22. The only public comment at the hearing was from the Humane Society of Skagit Valley. The Society submitted a letter which largely addressed what it perceives as shortcomings in the permit application format used by the County and in the ordinance itself, insofar as it contains an exemption for pre-existing kennels from the acreage limitations. These comments are aimed at the administration of the permit program or on the need for legislative action. The Hearing Examiner finds that the applicant provided ample information to evaluate and satisfy the requirements for protecting the health and welfare of the animals.

23. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the persons and the subject matter of this proceeding. SCC 14.06.050(1)(b).

2. The requirements of SEPA have been met.

3. A Hearing Examiner Special Use Permit is required for a "limited kennel" in a Rural Reserve zoning district. SCC 14.06.320(4)(n)(ii).

4. The subject kennel is a "limited kennel" as defined by SCC 14.04.020. The operation meets the special criteria for a limited kennel. SCC 14.16.900(2)(i)(ix).

5. The operation, as conditioned, will meet all of the applicable criteria for kennels under SCC 14.16.900(2)(i), including the provisions of Chapter 7.02 SCC. In particular, adequate provision have been made for the humane treatment of the dogs and the protection of human health.

6. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONDITIONS

1. The operation shall be conducted as described in the application materials, except as the same may be modified by these conditions.

2. The applicant shall comply with all conditions of the MDNS, issued July 28, 2009. (See Finding 17).

3. The applicant shall comply with the provisions of SCC 14.16.870, Notification of Development Activities on or Adjacent to Designated Natural Resource Lands.

4. The kennel shall adhere to all requirements listed in Chapter 7.02 SCC and all applicable requirements of SCC 14.16.900(2)(i).

5. The applicant shall comply with the following General Kennel Waste Handling Requirements:

- Kennels need to be cleaned at regular intervals to prevent accumulation of manure that attract flies and rodents. It is recommended that the kennels receive daily cleaning.
- The collected manure needs to be double bagged (heavy duty plastic) with little or no air space in amounts of no more than about 10 pounds. Dispose of the bags with either the household garbage service or self-haul to a Skagit County solid waste handling facility. The double bagged manure (as with household garbage) needs to be stored in durable rodent and fly proof containers with tight fitting lids. The waste needs to be disposed of on a frequency that does not create a nuisance or odors.
- Kennels should be located in areas where drainage from the pads, slabs and runway wash down will be absorbed on the applicant's property and will not affect surface or ground water. Wells should be located 100 feet from kennel drainage areas.
- No more water than is necessary to clean the pads should be used. If the down gradient drainage area is limited in size or the depth of soil limited or the permeability slow it is recommended a high pressure sprayer be used to limit the amount of water used to perform wash down.
- Storage or treatment in a holding tank or on-site sewage (OSS) disposal system separate from the residential system may be used with special review and permission by the Public Health Department. An OSS must be designed or approved by a Licensed Designer or Engineer, monitored on a frequency determined by the Health Department and pumped as needed.

6. The applicant shall comply with all applicable State and County regulations, including but not limited to Chapters 173-210A and 200 WAC (water quality), Chapter 172-60 WAC (noise) and SCC 14.16.840 (performance standards for noise, vibration and light).

7. Planning and Development Services (PDS) shall be notified by letter within 30 days after any change in ownership of the parcel. The letter shall reference permit number PL08-0418.

8. Per SCC 14.16.900(3), the applicant shall comply with the annual certification process, acknowledging in writing compliance with the original permit approval including any conditions.

9. All planning related fees, including recording of the decision, must be paid within 30 days of receipt of the invoice.

10. If the operation ceases for a period of one year, the permit shall be void.

11. Per SCC 14.16.900(2)(i)(xiv), this permit may be rescinded if it is discovered that the applicant has been convicted of animal cruelty as defined in Chapter 16.52 RCW.

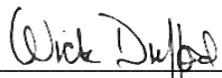
12. Per SCC 14.16.900(2)(i)(xv), PDS may rescind this permit if the operation is found in violation of any of the provisions of Chapter 7.02 SCC.

13. Failure to comply with any of the conditions herein may result in permit revocation.

DECISION

The requested Special Use Permit is approved, subject to the conditions set forth above.

DONE this 13th day of November, 2009.



Wick Dufford, Hearing Examiner

RECONSIDERATION/APPEAL

As provided in SCC 14.06.180, a request for reconsideration may be filed with Planning and Development Services within 10 days after the date of this decision. As provided in SCC 14.06.120(9), the decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with Planning and Development Services within 14 days after the date of the decision, or decision on reconsideration, if applicable.