

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

**Applicant:** Absolute Chiropractic  
c/o Drs. Richard and Linda Clemens  
312 Gardner Road  
Burlington, WA 98233

**File No:** PL06-0246

**Request:** Special Use Permit Modification

**Location:** 312 Gardner Road within the Urban Growth Area  
for the City of Burlington. The parcel number is  
P62439, within a portion of Sec. 33, T35N, R4E. W.M.

**Land Use Designation:** Urban Reserve Residential

**Summary of Proposal:** To modify an existing permit for a Home Based Business  
(Absolute Chiropractic) to allow for non-family employees  
living off site and to permit the sale of vitamins, minerals,  
food supplements and related products to patients.  
Specifically, the applicants seek permission for a Licensed  
Massage Practitioner to operate on site as part of the overall  
practice.

**Public Hearing:** After reviewing the report of Planning and Development  
Services, the Hearing Examiner conducted a public hearing  
on July 26, 2006.

**Decision:** The application is approved, subject to conditions.

## **FINDINGS OF FACT**

1. On May 30, 2003, the Hearing Examiner approved a Special Use Permit (PL03-0103) for Drs. Richard and Linda Clemens to operate a Home Based Business, called "Absolute Chiropractic," at an existing residence in the Burlington Urban Growth Area (UGA).

2. In Conclusion of Law 4 of that prior approval a number of conditions of approval were imposed. Condition (3) stated:

Only members of the immediate family residing on the premises may be employed in the home-based business.

Condition (4) stated:

No inventory shall be kept, other than incidental supplies necessary for and consumed in the conduct of the home occupation. No commodities shall be sold other than those produced on the premises.

3. The Clemens (applicants) now seek to modify Conditions (3) and (4). They want permission to allow for non-family employees who live off-site. This will permit a Licensed Massage Practitioner to operate as part of the overall chiropractic practice at the residence. In addition, the applicants seek permission to sell vitamins, minerals and food supplements to patients as part of the program of care.

4. A massage practitioner has in fact been working at the site for some time as an independent contractor. The applicants did not realize that for the purposes of the County's Home Based Business regulation, this person should be regarded as an employee.

5. The business is located at 312 Gardner Road on a .39 acres parcel within a portion of Sec. 33, T35N, R4E, W.M.

6. The County Staff Report describes the neighborhood as follows:

The surrounding area is designated as Urban Reserve Residential (URR) within the Urban Growth Area for the City of Burlington. The surrounding area consists of residential structures and uses on similar lot sizes. There are a few scattered pre-existing home based business located within the surrounding area which are either classified as outright permitted or have been permitted under previous conditional use permits. The existing structure and uses located in the immediate area along the west side of Gardner Road are currently located within

the incorporated city limits for Burlington, while the structure located to the east of Gardner Road are in the Urban Growth Area.

7. Although the site is inside the Burlington UGA, the applicable standards are the County's criteria for special uses and home-based businesses.

8. Burlington's standards disallow additional parking at home business sites. The County's standards state that such a business may not "create a level of parking demand beyond that which is normal to a residential area." The availability of appropriate parking was argued and resolved in the prior permit proceeding.

9. Burlington's standards disallow employees at home occupations. The County allows up to three additional employees beyond the family members who reside in the dwelling.

10. Burlington's Planning Director submitted a letter on the initial application opposing the permit on the basis that the use "is not appropriate in a single family residential zoning district." The main concerns were additional traffic and parking. In relation to the present application, the Burlington Planning Director opposed the modification of the permit on essentially the same grounds.

11. The applicants noted that the message therapist works only part-time and, when present, sees the patients of the chiropractic clinic. The effect of having the therapist is not to increase the number of persons visiting the site.

12. There is no evidence that the proposed permit modifications will change conditions at the site from what they have been. No additional traffic will be generated. No new parking will be required. The hours of operation will remain the same.

13. Various County Departments reviewed this application. None had concerns. Environmental review produced no evidence of new impacts. An addendum to the original Determination of Non-Significance was completed on June 9, 2006. No appeals of SEPA compliance were made.

14. The application and the hearing were given proper notice. Two residents of the neighborhood testified. One testified that parking overflows have occurred, but acknowledged that this has been rare. He urged vigorous enforcement of permit conditions. The other stated that problems with parking and congestion which she feared at first have not materialized in practice.

15. After its investigation, the Planning staff determined that there have not been demonstrated parking or traffic-related issues associated with the home occupation to date. The conditions that supported the issuance of the permit initially are still in existence.

16. The Staff Report analyzed the application against all of the general criteria for Special Use Permit Issuance and all special criteria applicable to a Home Based Business and determined that the operation, with the proposed modifications, will remain consistent with the applicable standards. 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.

17. 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(B)(ii).

2. The requirements of the State Environmental Policy Act have been met.

3. There is no separate process for modifying a Special Use Permit. Thus, the application has been subjected to the full analysis for such a permit. The facts do not support a conclusion that conditions have substantially changed. The record affirms the basis for the original permit.

4. SCC 14.16.900(3)(e) expressly provides that a Home Based Business 2 may include up to three additional employees, above and beyond the family members residing in the dwelling. There is no prohibition on the sale of items related to the business.

5. The changes sought here are minor and will not, in fact, change the intensity, appearance, or impact of the operation.

6. The Examiner concludes that the modifications are consistent with the Special Use Permit criteria of SCC 14.16.900(2)(b)(v) and the specific performance standards for home-based businesses of SCC 14.16.900(3)(e).a

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

## DECISION

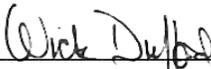
The Special Use Permit issued in PL03-0103 shall remain in effect and the conditions thereof shall continue in force with the following modifications.

Under Conclusion of Law 4, Condition (3) shall be changed to read:

(3) The business shall be carried out by members of the family residing in the dwelling and may include up to three additional employees. The business shall have no more employees than can be accommodated, along with patients, by present parking facilities.

Condition (4) shall be changed to read:

(4) The business may sell to patients items related to their care, such as vitamins, minerals and food supplements. No marketing of such items directly to the public shall be allowed.

  
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Wick Dufford, Hearing Examiner

Date of Action: August 10, 2006

Date Transmitted to Applicants: August 10, 2006

## 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.