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Skagit County Auditor

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AFTER RECORDING RETURN TO:
SKAGIT COUNTY HEARING EXAMINER
1800 CONTINENTAL PLACE
MOUNT VERNON, WA 98273

DOCUMENT TITLE: ORDER ON SPECIAL USE APPLICATION SU06-0994

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: MARJORIE SUNDBERG

ASSESSOR NO: P100738

LEGAL DESCRIPTION: The project is located at 16065 Mountain View Road; Lot 14
Wilida Mountain View Estates; within the NW1/4 of the NW1/4 of Section 26, Township
34 North, Range 4 East W.M., Skagit County, Washington.

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant: Marjorie Sundberg
16065 Mountain View Road
Mount Vernon, WA 98274

Attorney: Bruce Peterson, Attorney at Law
1604 Hewitt Avenue, Suite 601
Everett, WA 98201

File No: PL06-0994

Request: Special Use Permit (Home Based Business 2)

Location: 16065 Mountain View Road; Lot 14 Wilida Mountain
View Estates; within a portion of the NW1/4NW1/4
Sec. 26, T34N, R4E, W.M.

Parcel No: P100738

Land Use Designation: Urban Reserve Residential (URR) – within the urban
Growth area of the City of Mount Vernon.

Summary of Proposal: To authorize the operation of an existing facility for
breeding approximately 150 toy breed dogs as a Home
Based Business. The business uses five buildings varying
in size from 120 square feet to 3,900 square feet. The
operation features inside and outside dog runs, housing for
mother dogs and for puppies, and facilities for bathing and
grooming. Sales are made on the internet or by phone.
There are no on-site sales.

Public Hearing: After reviewing the report of Planning and Development
Services, the Hearing Examiner conducted a public hearing
on February 27, 2008. There was substantial public
testimony.

Decision: The application is denied.



FINDINGS OF FACT

1. Marjorie Sundberg (applicant) seeks authority to operate a dog breeding kennel as a Home Based Business 2. The business has been in operation for over three years without a permit. The application is the result of an enforcement proceeding.

2. The business is conducted on a rectangular five-acre site containing five buildings and a residence. The lot's dimensions are 330 feet by 634 feet. The address is 16065 Mountain View Road within the Mount Vernon Urban Growth Area, east of the city limits, but west of Highway 9. The property is Lot 14 Wilida Mountain View Estates situated within a portion of the NW1/4NW1/4 Sec. 26, T34N, R4E, W.M. The parcel number is P100738. The zoning is Urban Reserve Residential (URR).

3. The property is primarily flat and is heavily wooded except in the eastern half where the buildings were placed sometime in the early 1970's. Access to the property is from Mountain View Road which runs along the west boundary. Access is proved by a gravel driveway located in the middle of the property which leads to a cleared circle containing the existing residence and the accessory buildings. There is a security fence around the property and a security gate at the entrance. The buildings on site are screened from outside view by trees and shrubs.

4. The majority of surrounding properties are developed with single family residences. There is a golf course in the vicinity. No activities similar to the proposed dog breeding operation are located in the area.

5. The number of dogs on site at any one time is unclear. In December of 2006, the applicant wrote that she "currently" had "around a hundred and fifty dogs" on the property. On reviewing the application, the Sheriff's Office's Animal Control Officer said that the applicant had told her there were over 200 dogs. The numbers given for dogs on site may only include the adult breeding dogs and not include the puppies. The Staff Report seems to assume this, and the record contains no contrary information from the applicant.

6. The dogs bred at the facility are toy breeds ranging from three to six pounds. Included are Yorkshire terriers, Chihuahuas, Shih Tzus, Westies, Pugs and Poodles. The dogs are kept principally in three areas: a) runs used for breeding and playing; b) the mother's room for mothers and their babies, and c) the puppy room where puppies are in time taken away from the mothers to await sale.

7. The buildings are identified on the site plan as A through E. Buildings A-D contain runs for the adult dogs. (Building B is apparently not currently in use.) The dogs are separated according to breed. There is one breeding male for every two females. The females are bred only once a year and given the remaining time to rest.



8. Building E is by far the largest building, containing about 3900 square feet. In addition to breeding runs, it contains the puppy room, the mother's room, a washer and dryer, a bathtub and grooming area, and various supplies.

9. The dog runs are partially indoors and partially outside. They are approximately four feet wide by 13 to 16 feet long, with about eight feet outside. All of the runs and the buildings have cement floors. There are eight-foot fences around all the runs.

10. There are drains in each building. Each room is equipped with heating, ventilation fans, a sink, and a deodorizing system. Sound-proof insulation has been installed in the buildings.

11. Once a female is bred, she is transferred to the mother's room and placed in one of 34 large black pens, equipped with a heat lamp and large bed. After whelping, the puppies are kept with the mother in the mother's room for seven to nine weeks. Then the mother and puppies are transferred to the puppy room and placed in a 36" by 36" silver pen. After about a week, weaning is complete and the mother is taken away and put back into one of the runs with other females of her breed. Puppies are held in the puppy room until sale.

12. According to the applicant, the dogs are bathed and groomed regularly. They are free fed, meaning they constantly have a full food and water bowl. The runs, rooms, beds, food bowls and water bowls are cleaned daily. The washer and dryer are used to clean the bedding.

13. The property is served by three onsite septic systems. Two of these are used by the dog breeding operation and the third serves the residence. There is a Group B public water system. Dog urine is apparently washed down into floor drains which lead to one of the septic systems. The waste water from equipment cleaning, dog washing and washer/dryer operations also goes to one of these system. In March of 2007, the two septic systems associated with the dog breeding operation were inspected by a certified maintenance specialist and found to be working satisfactorily.

14. Fecal matter is picked up and placed in garbage bags which are stored in metal receptacles until collected and disposed of by Waste Management. No problems have been reported with the acceptance of bagged animal waste by Waste Management.

15. The breeding dogs are eventually debarked to reduce noise. All dogs are brought in after dark to prevent night barking from being heard.

16. The applicant states that the dogs are regularly vaccinated, wormed, given flea treatments and dental care. The breeding operation uses the services of a veterinarian who wrote a letter attesting to the cleanliness of the facility and the attention given to the good health of the dogs. No statistics were provided on the experience of



illness among the animals or the number that die on site. When a dog dies it is either buried on site or brought to the veterinarian for disposal. After about six years of breeding, the adult dogs are adopted out.

17. The dogs are sold over the phone or via the internet. Deliveries are made off site. No customers come to the breeding facility. Beyond this, no detail was provided on the sales side of the business. The record contains no financial data, no information on the volume of business, no information on customer satisfaction.

18. There is no definite information on how many people are involved in running the breeding operation. The application states that there are no outside employees of the business, that only family members are involved. A daughter who lives in Snohomish County is apparently active in the sales operation. Only the applicant and her husband are identified as working on site.

19. The County sent a letter of completeness of the application on February 2, 2007. A Mitigated Determination of Non-Significance (MDNS) under the State Environmental Policy Act (SEPA) on April 3, 2007. The MDNS was not appealed. It contained the following conditions:

1. Solid waste shall be at a minimum double bagged and placed in metal receptacles on premise to be disposed of on a weekly schedule picked up by Waste Management, Inc., another solid waste handler or taken to the dump.
2. Any additional approved onsite septic system must be used exclusively for the containment of the dog waste and must be monitored and maintained at a maximum of every six (6) months.
3. Any excessive barking dog(s) shall be kept inside the building(s) designed for the business.
4. The applicant shall comply with SCC 14.16.840;

20. Twenty letters were received from the public, all of them opposing the application. The major concerns were to the size of the operation, noise from barking, waste handling, water pollution, proper care for the dogs, property values, conflict with local covenants, compatibility with the neighborhood, and lack of regulations covering this type of business. Similar sentiments were expressed in public testimony at the hearing. As a result of the application, a petition was circulated around the County opposing the operation as a "puppy mill." Over a thousand signatures were obtained.

21. The Humane Society of Skagit Valley registered its objection, characterizing the operation as "the mass production of hundreds of more puppies in total disregard of the overpopulation problems that this County presently faces." The Society asserted that



the applicant and her husband can not adequately give the proper care, exercise and social interaction needed for 150 dogs. This position was based on the fact that the Humane Society schedules seven people each morning to clean and care for up to 75 animals at the shelter. The Director of the Humane Society testified, urging that regulations be adopted concerning the appropriate size of dog breeding operations and specifying humane conditions before any such operations are given permits.

22. Notwithstanding debarking efforts, a number of neighbors advised that they can hear barking from the property and that it is annoying. No off-property odor problems were substantiated.

23. Fears were expressed that improper waste handling may result in water contamination or public health problems. The solid wastes were described as a potential bio-hazard that should be the subject of a hazardous waste management plan. More detail on the handling of the fecal material was sought.

24. A tributary of Nookachamps Creek, a salmon bearing stream, lies down-gradient from the site. Concerns were expressed that contaminated waters could migrate from the site and degrade water quality.

25. Significant sentiment was expressed about the difficulty of maintaining the health and achieving socialization for such a large number of dogs. Several letters noted that dogs have on occasion escaped from the facility and that neighbors have had to return them.

26. In general, neighbors were of the opinion that the large breeding operation is not compatible with the character of the residential area, that it will probably reduce property values, and that a regulatory limit is needed to control the size of dog breeding operations. It was also argued that maintaining animals on this scale violates the private covenants that govern Wilida Mountain View Estates.

27. A focus of the opponents was that there are now no regulations in the County governing dog breeding operations. Regulations on the subject have been under discussion for some time, but no final version has been agreed upon and adopted.

28. The uses expressly allowed in the Urban Reserve Residential zone are listed in SCC 14.16.370. Neither dog breeding operations nor kennels are listed as permitted outright or as subject to some sort of special use approval. However, home based businesses are listed among the uses allowed by Special Use Permit.

29. Both "kennel" and "home based business" are defined terms under the County Code. There is no definition that would cover a "dog breeding operation" of the type in question.

30. SCC 14.04.020 defines "kennel" as follows:



Kennel: a place where 4 or more dogs and/or cats are temporarily boarded for compensation and may be bred for compensation. Puppies and kittens under 16 weeks old are not included in this quantity.

The dog breeding facility run by the applicant does not fit this definition. The animals are not boarded for compensation, nor brought in to be bred. The animals belong to the applicant until sold.

31. SCC 14.004.020 defines "home based business" as follows.

Home Based Business: Home based businesses are home occupations that remain incidental to the use of a residence for general dwelling purposes and are compatible with rural character. Two categories of home based businesses are allowed in Skagit County: Home Based Business 1 and Home Based Business 2. Home Based Business 1 is generally a permitted use while Home Based Business 2 requires a special use permit.

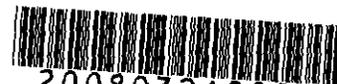
Because of the use of the accessory buildings, the proposed dog breeding operation would have to fall under the Home Based Business 2 category. Compare SCC 14.16.730(2)(a) and 14.16.900(2)(e)(iii).

32. In general, the zoning code allows only listed uses in any zone. When a use is not listed, it may nonetheless be allowed if the Administrator determines "that the use is similar to other uses listed." In this case there is no record of any request to qualify the dog breeding operation as an allowed use on the basis of its similarity to other uses in the zone. For the success of such a request, had there been one, the Administrator would have had to find that the proposed use shares characteristics in common with listed uses and is not of greater intensity than listed uses. SCC 14.16.020(3).

33. The specific criteria for a Home Based Business 2 Special Use Permit include a requirement that the business "is clearly incidental and secondary to the use of the property for dwelling purposes." SCC 14.16.900(3)(e). Based on the number of dogs and the number of accessory building used, the Staff takes the position that the breeding business "is in excess or what would be considered as being incidental to the use of the property for residential purposes."

34. The Hearing Examiner agrees. The scale of the operation overshadows the use of the property for residential purposes. The business is the dominant use, not a secondary activity.

35. 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)(ii). This is a Process II proceeding.

2. The requirements of SEPA have been met.

3. The applicant's counsel argues that because the breeding operation is an unlisted use it is allowed and is a conforming activity. This is simply not the case. Under the scheme adopted by Skagit County only listed uses are permissible, unless a special procedure has been followed to qualify an unlisted use as "similar to other uses listed." SCC 14.16.020(3). Since that procedure was not followed here, the only way this operation can be authorized is to fit it within a listed use.

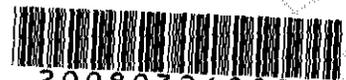
4. The only listed use that even arguably qualifies is Home Based Business 2. See SCC 14.16.370(4)(j). To qualify for a permit, a Home Based Business 2 must be consistent with both the general criteria for a Special Use Permit and the specific criteria for such a home based business. SCC 14.16.900(1)(b)(v) and SCC 14.16.900(2)(e).

5. In a Process II proceeding, the applicant bears the burden of demonstrating that the project complies with the applicable criteria and requirements of the Skagit County Code and other applicable law. SCC 14.06.160(3)(b).

6. There is some potential for off-site pollution and contamination, but the record does not support denying the application because of the likelihood of adverse environmental impacts. Barking is now proving to be an annoyance to some, but neither barking nor odors appear to rise to the level of "undue impacts" on surrounding properties. See SCC 14.16.900(1)(b)(v)(C).

7. The general criteria for a special use require that consideration be given to "potential effects regarding the general public health, safety, and general welfare." SCC 14.16.900(1)(b)(v)(E). In the Examiner's view, the applicant has not carried her burden in regard to this criterion. Not enough is known about the post-sale experience of this business. The issue of whether the dogs produced by this operation really are healthy, well-adjusted and fit for entry into the population of pets owned by the public deserves more thorough examination. Moreover, the question raised by the Humane Society concerning whether a dog breeding operation on this scale is in the public interest was not answered.

8. Further, as noted, the specific requirements for a home based business dictate that the business be "clearly incidental and secondary to the use of the property for dwelling purposes." The applicant has also failed to carry her burden as to this criterion. The operation as described was not shown to be either "clearly incidental" or "secondary" to the use of the property for dwelling purposes.



9. Accordingly, the application fails to meet the standards for Special Use Permit Approval.

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

DECISION

The application is denied.

Done this 20th day of March, 2008



Wick Dufford, Hearing Examiner

Transmitted to the Parties: March 20, 2008

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.

