

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant: Charlie Schindelka
2061 State Route 20
Burlington, WA 98233

File No: PL04-0042

Request: Special Use Permit

Location: 20601 State Route 20, just east of the Burlington
Urban Growth Area, within a portion of Sec. 33,
T35N, R4E, W.M.

Land Use Designation: Rural Business (RB)

Summary of Proposal: To change the use of the site from previous commercial
uses to a car sales and restoration business.

Public Hearing; After reviewing the report of Planning and Development
Services, the Hearing Examiner conducted a public
hearing on November 23, 2005.

Decision: The application is approved, subject to conditions.

FINDINGS OF FACT

1. Charlie Schindelka (applicant) seeks a Special Use Permit to allow him to conduct a car sales and restoration business on property just east of the Burlington Urban Growth Area.

2. The site is at 20601 State Route 20 between Gunderson Lane to the west and Mary Lane to the east, within a portion of Sec. 33, T35N, R4E, W.M. The zoning is Rural Business (RB). The applicant resides on the site.

3. The applicant seeks to change the commercial use. The Staff reports that the property was previously used as a real estate office. Before that it was used as a veterinary clinic. A Special Use Permit is required for a change of use when SCC 14.16.150(2)(b) does not apply.

4. Under subsection 2(b) a change of use is a permitted use when the new use is substantially similar to the existing use in terms of the type of commercial activity performed. The subsection explains as follows:

A substantially similar use shall fall within the same broad category as the existing use (retail, service, restaurant, or manufacturing), shall generate equal or less traffic as the existing use, and shall continue the same basic operational characteristics as the existing use (for example, a change of use from a convenience store to a gas station would not be permitted, but a change of use from a convenience store to a video store would).

5. The Staff has concluded and the Hearing Examiner agrees that the proposed new use does not qualify as a permitted use under subsection 2(b). Therefore, a Special Use Permit must be obtained. Pursuant to SCC 14.16.150(4)(e), such a permit may not be approved if the change would result in a substantially increased impact in any one of a number of listed areas.. Included is:

(J) Change to the visual character of the structure or property that would significantly and negatively affect the visual character of the surrounding area.

6. The property is approximately 2.1 acres in size, measuring about 350 feet on the front (south) along State Route 20, about 300 feet across the rear (north), about 400 feet along the west side, and about 220 feet along the east side.

7. The site is flat and contains a house/office located along the front property line, with two accessory structures located behind the primary building. To the west is an

existing office building within the Urban Reserve Commercial-Industrial zoning of the City of Burlington. There are also residences immediately to the west. To the east is a residential subdivision with homes on ¼ acre lots. An open grass field lies immediately to the north in Rural Intermediate zoning. Agricultural fields with scattered residential uses are located to the south on the opposite site of State Route 20.

8. The business in question focuses of the purchase, restoration and sale of vintage cars. Some parts are apparently also sold. Advertising and sales are made on the internet. The use has, in fact, been in operation on the site for several years. If the Special Use Permit is approved the applicant would continue operations.

9. The application states that hours and days of operation will be the same as for the previous use. The applicant anticipates operating between 9 a.m. and 3 p.m., Monday through Saturday. No employees are listed outside of persons residing on site.

10. The restoration work includes repair or replacement of damaged parts to the body or mechanical systems of the cars purchased. The applicant says that only minor parts are changed on site. This is done within an enclosed building. The majority of the mechanical work is subcontracted out and performed elsewhere. No oil or fluid changes are performed on site. No anti-freeze is maintained on site. There are no tanks of chemicals there.

11. No threat of water contamination is predicted because operations posing a significant risk of spills occur off-site. There is substantial separation between the parking areas on site and the existing drainfield.

12. According to the applicant, the internet marketing system means no additional traffic or client parking impact will result from operating the business. Customer visits will largely be limited to picking up cars that have been sold. The only other traffic would be connected to bringing purchased cars in, taking them out for off-site work, and then bringing them back.

13. After restoration, the vehicles are inspected by the State Patrol and licensed. They are then kept as investments, to be sold to selectively. Several areas between the house and barn are shown on the site plan as “auto park” areas. According to the “current conditions” drawing these are for cars that are renovated and cars that will be scrapped. There is an unexplained category called “other people’s cars.”

13. The conduct of the business involves storing vehicles awaiting restoration in a holding area. The area is approximately 38’ x 30’ in size and is to be surrounded with a wooden board fence, five feet in height.

14. The applicant notes that perimeter of the property is fenced where natural blockage from trees and bushes do not screen the site. Plans are to paint the outside fence

a moss green to blend with the vegetation. Where the fence is visible to neighbors, the plan is plant trees and shrubs to further block views.

15. A rudimentary landscaping plan has been submitted. Staff is asking that the cars on site be concealed from the neighboring properties to the maximum extent possible. Conditions are proposed relating to the need to screen the east and west property boundaries.

16. No increase in noise, light, glare or in environmental impacts generally is predicted from this use. A Determination of Non-Significance (DNS) under the State Environmental Policy Act (SEPA) was issued for the application on August 4, 2005. The DNS was not appealed.

17. The use does not require the installation or extension of urban services.

18. The applicant is a renter of the property. The owner approves of the application. The use is described by the applicant as akin to a hobby. It is an unusual kind of enterprise, unlikely to be replicated by a future renter.

19. A number of neighbors objected strenuously to this application. They said that there have been numerous complaints about the operation from the outset. Their main concern is with visual effects which they said have a substantial negative impact the rural residential character of the neighborhood.

20. They said that stored cars are clearly visible from some homes and that many more than 20 cars have been present on the site at once. They also testified that parts and equipment have been present in the yard. The fence that has been placed along the property was described as a "hideous junk yard fence." In general, the neighbors' felt that the subject business has had a cluttered and poorly kept appearance that has been an eyesore.

21. There was testimony that, by contrast, the prior uses had no visual impact. Indeed, the immediately preceding use was so unobtrusive that some neighbors had no idea that the property was ever used as a real estate office. The previous veterinary clinic use apparently entailed the presence of horses. Some neighbors would rather look at horses than old cars.

22. Much skepticism was voiced about whether the County would enforce conditions attached to any approval. In particular, there were concerns about dealing with the escape of petroleum products and hazardous materials into the ground water.

23. The Schindekas were understandably defensive about their neighbors' comments. They asserted that pictures taken by the neighbors were taken at extreme angles and heights and do not represent normal views into their property. From photographs submitted by both the applicants and the neighbors, automobiles are

certainly visible, but there is no evidence of the sort of messiness on the property that was complained of.

24. The application was reviewed by various County departments. Their comments are reflected in conditions of approval. The City of Burlington had no comments. The Washington State Department of Transportation advised that an access permit from the State Highway has been granted for the site.

25. The standard conditions for Special Use Permit approval are set forth at SCC 4.16.900(2)(b)(v). The Staff analyzed the application in light of these criteria and determined that, as conditioned, the use would 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.

26. The Staff emphasized that this property is zoned for business. It was noted that the storage of vehicles on the property could occur even if there was no business being conducted. Staff recommended approval with conditions.

27. Any conclusions 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.

2. The requirements of SEPA have been met.

3. Unless there is compelling reason to believe the contrary, it must be presumed that conditions of approval will be complied with. In this case, the Examiner has not been persuaded that the applicant will probably fail to comply with the conditions imposed.

4. Note is made that a failure to comply with permit conditions may result in revocation of the permit. If the permit is revoked, the applicant must cease the use involved.

5. The Special Use Permit may not be granted if the Hearing Examiner determines that it will result in a “substantially increased impact” on any one of a number of criteria listed in SCC 14.16.150(4)(e).

6. The Examiner has reviewed this list and concluded that, in this case, the visual impact criterion is the only standard that might potentially be violated. Under that standard there may be no “change to the visual character of the structure or property that

would significantly and negatively affect the visual character of the surrounding area.”
SCC 14.16.150(4)(e)(K).

7. This is a basically subjective standard. Because of this, a conclusion that a use will cause a significant negative change to “visual character” can be sustained only in a truly clear case, where it is apparent that even conditions of approval cannot effectively mitigate the impact. Here the Examiner is convinced that appropriate screening – in particular landscaping – can ameliorate the perceived negative visual aspects of the use.

8. There was no showing that a series of small violations of the listed criteria would likely combine to result in a substantially increased overall impact.

9. The Examiner was influenced by the zoning context. The location is a business district, adjacent to an Urban Growth Area where the bordering zone is also a business district. The compatibility required of special uses is of “existing and planned land use.”

10. The facts support a conclusion that, as conditioned, the use will conform to the requirements of SCC 14.16.900(2)(b)(v).

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

CONDITIONS

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

2. The permittee shall maintain no more than 25 cars associated with the business on the property at any one time.

3. The permittee shall obtain all other necessary permits and approvals. A building permit shall be required for any change of use of any building. This may necessitate providing adequate fire flow.

4. The permittee shall comply with all relevant provisions of the County Code, including the drainage ordinance and the performance standards of SCC 14.16.840.

5. The permittee shall screen the vehicles from the adjacent residential uses to the maximum extent possible. Screening shall include appropriate natural or earth tone painted fencing and the use of existing and installed plantings, as illustrated in the drawing submitted on July 29, 2005. In addition, where not present along exterior fences, additional landscaping shall be inserted in order to more fully screen the property and soften the appearance of the fencing.

6. A detailed landscaping plan describing the types, sizes, and spacing of plants to be installed shall be submitted to and approved by Planning and Development Services within two months of the issuance of this permit. The plan shall be implemented as soon as approved.

7. Care shall be taken that the plantings are successfully established. If any plants die or fail to thrive, the permittee shall replace them. The vegetative screen shall be maintained during the life of this permit.

8. One year after the approval of this permit, the permittee shall provide Planning and Development Services with evidence of the success of the screening and landscaping program. If on inspection, Planning and Development Services determines that screening to the maximum extent possible has not occurred, additional requirements to this end may be imposed.

9. There shall be no permanent storage of vehicle parts out of doors. No piles of parts or partial vehicles shall be allowed to accumulate in any area. Any parts left out of doors shall be removed within a month.

10. No more than four unlicensed or inoperable vehicles, not awaiting restoration, shall be located on the site at any one time.

11. The areas for outdoor parking of cars associated with the business shall be neatly maintained with no grass or vegetation allowed to grow up around the vehicles.

12. Oil and fluid changes for the cars shall be performed off site. No vehicle fluids shall be allowed to drain or leak onto the site. Any disposal of petroleum products shall occur within a fully contained area meeting the requirements of the Department of Ecology and shall be removed from the site by an approved contractor. No industrial waste shall be disposed of in the on-site septic system.

13. The distance between cars parked at the site and the drainfield shall satisfy the Department of Health. Care shall be taken to avoid compaction of the on-site septic system by vehicular traffic.

14. The permittee shall minimize potential stormwater runoff pollution by applying appropriate best management practices for this land use. If necessary to avoid pollution, stormwater from the parking and maintenance areas shall be treated. Compliance with standards for surface and ground water quality shall be maintained. See Chapters 173-201A and 173-200 WAC.

15. If future indoor operations should occur, proper ventilation shall be addressed by approved methods. No vibrations from running or idling equipment shall be allowed to create a nuisance to nearby neighbors.

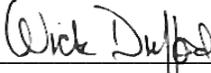
16. If applicable, a list of quantities of flammable liquids and other hazardous materials and the MSD's for those materials will be required at the time of building permit application.

17. This permit shall be personal to the applicant and shall not run with the land. Should the applicant move or should he cease to operate the business for a period of one year, the permit shall become void.

18. Failure to comply with any permit condition shall be grounds for permit revocation.

DECISION

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



Wick Dufford, Hearing Examiner

Date of Action: January 26, 2006

Date Transmitted to Applicant: January 26, 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.