

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant: Mary Rose
5477 Campbell Lake Road
Anacortes, WA 98221

File No: PL05-0061

Request: Special Use Permit (Home Based Business II)

Location: 5477 Campbell Lake Road, within a portion of Sec. 12, T34N, R1E, W.M.; Parcel # P19249.

Land Use Designation: Rural Reserve

Summary of Proposal: To operate a medical consulting business in a residence, involving visits to the site by an average of five to seven clients each week. Also requested is authority to operate a small scale dog breeding business in the same home.

Public Hearing: After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing on May 25, 2005.

Decision: The application is approved, subject to conditions.

FINDINGS OF FACT

1. Mary Rose (applicant) seeks a Special Use Permit to operate a medical consulting business and a small dog breeding business in her home at 5477 Campbell Lake Road.
2. The property is Parcel #P19249, approximately 5.92 acres located east of the intersection of Donnell Road and Campbell Lake Road, within a portion of Sec. 12, T34N, R1E, W.M. The zoning is Rural Reserve.
3. Mary Rose is a physician and a botanist. The parcel in question is the site of extensive and attractive gardens she has created over the past 30 years as a habitat for native plant species. Her home in this calm setting is the center of a specialized medical practice that she wishes to continue to conduct in what she calls “semi-retirement.”
4. Dr. Rose is a long-time family physician who spent many years on the faculty at the University of Washington. She has an extensive background in immunology and in treating allergies and infectious diseases. Judging from the testimonials on the record, she has a high reputation with her patients.
5. What she seeks is an after-the fact permit authorizing a businesses that she has established. The necessary remodeling work for the operations was apparently completed last year.
6. The medical practice she operates focuses on a few patients with complex cases. Significant time is taken for evaluation and research, ultimately resulting in a detailed personalized treatment plan for every patient. For most, the evaluation and treatment is conducted in Dr. Rose’s home. In some cases, however, she conducts house calls, particularly where age and mobility are problems. In many ways, Dr. Rose is following the example of her grandfather and great-grandfather, who were physicians who practiced medicine at their homes.
7. The subject medical practice is clearly secondary and incidental to the use of the home for dwelling purposes. It is a four bedroom house. The water and sewage disposal systems are approved. The applicant has converted one room of the home to the medical practice.
8. The applicant does not plan to have any employees. There will be no outside storage or other external indication of the home based business. No business signs will be put up.

9. Much of the work will be conducted by telephone. Visits to the house by patients will be by appointment only. Most visits will be in the afternoon. On average, five to seven patient visits a week are anticipated. Patients will generally arrive one at a time. There is adequate parking to accommodate their visits.

10. Nothing about the conduct of the business will cause adverse environmental effects. There are no laboratory facilities. There are no discharges of toxic or polluting materials. The level of external activity around the home will not differ materially from use of a residence by a family.

11. In addition to the medical practice, the applicant keeps four small dogs at the house. Three of these are Cuban (Havanese) companion dogs, and the fourth is a toy poodle-miniature Schnauzer. She wishes to conduct a small business involving internet sales of puppies. The business will not be a kennel. No temporary boarding for compensation will be involved. Breeding will occur off site. The operation will be on the scale of a hobby. The dogs will be kept indoors except when she takes them outdoors with her.

12. A Determination of Non-Significance (DNS) under the State Environmental Policy Act (SEPA) was issued for the applicant's proposal on April 5, 2005. The DNS was not appealed.

13. SCC 14.16.900(3)(e) sets for special criteria for a Home Based Business 2 Permit, as follows:

- a. Is carried out by a member or members of a family residing in the dwelling and may include up to three (3) additional employees;
- b. Is clearly incidental and secondary to the use of the property for dwelling purposes;
- c. The business activity may be conducted in other than the dwelling;
- d. Has no outside storage nor other exterior indication of the home occupation or variation from the residential character of the property with the exception of one (1) sign not to exceed four (4) square feet, provide such sign shall not be illuminated;
- e. Does not create a level of electrical interference, line voltage fluctuation, noise, vibration, smoke, dust, odors, heat, glare, traffic and other environmental impacts beyond that which is common to a residential area;
- f. Does not create a level of parking demand beyond that which is normal to a residential area;

g. May have clients come to the site;

14. The application and applicant's testimony disclose an understanding of these limitations and a willingness and ability to comply with them.

15. . The criteria for Special Use Permit approval are set forth at SCC 14.16.900(2)(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 14.16.840.

(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 and services and will not adversely affect public services to the surrounding areas, or conditions can be established to mitigate adverse impacts on such facilities.

16. The Staff Report analyzes the application in light of the above criteria and determines that, as conditioned, it will be consistent with them.

17. At the hearing the Staff requested that its proposed Condition #2 be replaced with a statement that for access the applicant shall be required to meet standards based on Section 503 of the International Fire Code. In addition, the Examiner has determined that an additional condition limiting the number of patient visits per week is desirable. With these substitutions, the Hearing Examiner concurs with the Staff analysis and

adopts the same. The Staff Report is by this reference incorporated herein and made a part hereof as though fully set forth.

18. Consulted County departments did not object to the home-based businesses. In general, their comments are incorporated as conditions of approval.

19. Nearly 50 public comment letters were written concerning this home-based business application. Most were written by past and present patients of Dr. Rose who favor the application. Opposing sentiments were principally voiced by the Luminas, neighbors who recently made changes to the shared access road in the course of building on their own property. Essentially the Luminas are worried that activity related to the home-based businesses will destroy the peace and tranquility of life at their home.

20. Concerns were expressed that there has been an excessive amount of traffic going to the applicant's house – more than should be tolerated for a home-based business. While the applicant was pursuing her remodeling project, unusually high traffic was experienced on the road. The Examiner is not convinced, however, that the applicant will fail to comply with a condition limiting her patient visits to an average of 10 per week. Such a level of use would not exceed that to be expected for an ordinary household with teen age children.

21. The road into the property is a private roadway that provides the access to both the applicant and the Luminas. The Luminas are located closer to Campbell Lake Road. For many years this access route satisfactorily served the properties involved. Recently differences arose when the Luminas made changes to the character and configuration of a portion of the road. Concurrent with those changes, drainage problems were noted. The road has become a bone of contention.

22. Beyond concerns about the physical condition of the roadway, there is a potential conflict about the nature and extent of property rights respecting its use.

23. A County enforcement effort has the possibility of providing a means to resolving at least some of the roadway problems. On May 24, 2005, the County issued a Notice and Order to Abate to the Luminas suspending their building permit until the gradient of the driveway is corrected to meet County standards.

24. From the standpoint of authorizing the home-based businesses at issue here, the critical requirement is only that the roadway be satisfactory to the Fire Marshal for purposes of emergency vehicle access. This will require inspection to determine if the physical conditions are adequate.

25. The disputes between the neighbors over the access road are not otherwise relevant to the question of authorizing the home-based businesses as uses. The probable adverse impacts of the uses include neither traffic nor drainage impacts. As noted, the

traffic volume will not differ from normal residential use. If drainage problems exist, they are not the result of the home-based business activities.

26. 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).

2. The requirements of SEPA have been met.

3. Absent compelling contrary evidence, it is presumed that permittees will comply with the conditions of approval imposed upon them. In this case, the Examiner is persuaded that compliance is likely.

4. "Home Based Business II" is allowed with an approved Hearing Examiner Special Use Permit in the subject zone. SCC 14.16.320(4)(o).

5. The Hearing Examiner has no power to adjudicate disputes about property title, boundaries or easements. His role is limited to determining whether proposed land use activities conform to the requirements of the County's Code.

6. The facts support a conclusion that the businesses described in the application at hand will be consistent with the applicable approval criteria, if conditioned as set forth below. SCC 14.16.900(2)(b)(v), SCC 14.16.900(3)(c).

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

CONDITIONS

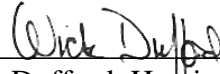
1. The businesses shall be conducted as described in the application, except as the same may be altered by these conditions. The applicant shall obtain all other applicable permits prior to the start of business.

2. The applicant shall demonstrate to the satisfaction of the Fire Marshal that the standards of Section 503 of the International Fire Code are met.

3. The applicant shall comply with relevant provisions of Chapter 12.48 SCC, (Board of Health Rules Governing Individual and Public Drinking Water Systems.) Approval of the water system shall be obtained from the Skagit County Health Department.
4. A hydrogeo report shall be prepared to the extent necessary to evaluate potential effects of the proposed uses on aquifer recharge areas. The report shall address the provisions of SCC 14.24.340(3)(c).
5. The applicant shall comply with Chapter 173-60 WAC and SCC 14.16.840 for noise and light conditions.
6. The applicant shall comply with the state regulations regarding surface and ground water quality. Chapters 173-201A and 173-200.
7. Approval of this Special Use Permit does not support a future land division.
8. Non-residential employees shall be limited to three.
9. One (1) non-illuminated sign not to exceed four (4) square feet shall be allowed on site.
10. The medical practice shall involve no more than 10 patient visits per week, on average.
11. The special use permit shall be void if the authorized activities are not started within to years of the date of this decision and if abandoned for a period exceeding one year.
12. When the businesses grow beyond the criteria established for a Home-Based Business or limits established by these conditions, the business shall relocate to a zoning classification which permits the activity.
13. Planning and Development Services shall be notified within 30 days after any change in ownership of the parcel by submitting a letter to the Planning Director referencing the permit number PL05-0061.
14. Prior to the issuance of any permit, all outstanding PDS and Health Department review fees shall be paid in full.
15. Failure to comply with any of these conditions may result in permit revocation.

DECISION

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



Wick Dufford, Hearing Examiner

Date of Action: June 28, 2005

Date Transmitted to Applicant: June 28, 2005

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.